SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 298

S. M. NICKEY, W. E. NICKEY, MRS. ORPHA L. NICKEY, ET AL., APPELLANTS,

vs.

THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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IN CHANCERY COURT OF TUNICA COUNTY, SEPTEMBER RULES 1929

STATE OF MISSISSIPPI ex Rel. RUSH H. KNOX, Attorney General,

vs.

A. B. NICKEY & SONS

BILL OF COMPLAINT—Filed July 23, 1929

To the Honorable Chancery Court of Tunica County, Mississippi:

Now comes Rush H. Knox and respectfully shows to the court that he is the duly elected, qualified and acting Attorney General of and for the State of Mississippi, and complains of A. B. Nickey & Sons, a co-partnership composed of A. B. Nickey, S. M. Nickey, W. E. Nickey and Mrs. O. L. Nickey, operating and doing business under the name of A. B. Nickey & Sons.

Complainant further shows to the court that each of the above named defendants are non-residents of the State of Mississippi, all of said defendants being, as he is informed and believes, residents of the City of Memphis, Shelby County, Tennessee, but that the street addresses of said defendants are unknown to complainant and he has been unable to ascertain same after diligent search and inquiry.

Complainant further shows to the court that the said A. B. Nickey & Sons are the owners of large tracts of land in Tunica County, Mississippi, and were the owners of said lands on the first day of February, 1928, said lands being described as follows:

NE¼ and NE¼ of NW¼ and S½ of NW¼ and S½ of Section 2, Township 4, Range 10, and a 3 acre strip in said section; all of that part of Section 23, Township 4, Range 10 lying North of Coldwater River, and that part of the NW¼ of Section 24, Township 4, Range 10 lying north of Coldwater River, and the W½ of Section 12, [fol. 2] Township 4, Range 10, and the W½ of Section 13, and all of Section 14, Township 4, Range 10, all in Tunica County, Mississippi.

Complainant further shows to the court that all of said lands were duly and legally assessed to the said A. B. Nickey & Sons for the year 1928, and reference is hereto made to the tax rolls of said county, which original rolls will be produced at the hearing of this case.

Complainant further shows to the court that all of said lands are within the Yazoo-Mississippi Delta Levee District and Brunswick Extension, and are also within the Lake Cormorant Drainage District in said County.

Complainant further shows to the court that none of the taxes levied against any of said lands have been paid for the year 1928, although same are now long past due, and that neither the Yazoo-Mississippi Delta Levee ad valorem or the Brunswick Extension or the Yazoo-Mississippi Delta Levee Acreage taxes have been paid for said year, and that the Lake Cormorant drainage District taxes, although long delinquent, have not been paid for the year 1928, and that the state and county ad valorem taxes of the various subdivisions of said County have not been paid, but that all of said taxes are long since delinquent and that said lands have been advertised for sale, as required by law, by T. E. Salmon, Sheriff and Tax Collector of Tunica County, Mississippi.

Complainant respectfully shows to the court that there is now due from A. B. Nickey & Sons for taxes due the State of Mississippi, County of Tunica, the Yazoo-Mississippi Delta Levee District and Lake Cormorant Drainage District and the various taxing districts in said county, together with costs, damages, etc., the sum of $7,483.22, as shown by statement hereto attached marked Exhibit "A" and made a part of this petition; said exhibit showing in [fol. 3] detail how the taxes are distributed according to the rolls of said county.

Complainant respectfully shows to the court that all of said lands are chiefly valuable on account of the timber growing thereon, and that the taxes now due are the taxes that were assessed against said lands as timber lands, and complainant is informed and believes that the land exclusive of the timber is not of a value sufficient to pay the taxes now past due on said lands.

Complainant respectfully shows to the court that he is informed and believes that the said defendants are now engaged in removing the timber from said lands, and that

unless they are enjoined and restrained from so doing that all of said timber will be removed from said lands and the state, county and subdivisions thereof will be deprived of taxes justly due and owing by said defendants.

Complainants is informed and believes that it is the custom of said defendants to remove the timber from the lands owned by them and then permit same lands to be sold for taxes, and that in De Soto County, Mississippi said defendants, as complainant is informed and believes, recently permitted approximately 1,000 acres of land owned by them to be sold to the State of Mississippi for taxes, and that said lands are not now worth the amount of taxes assessed against them, and complainant is informed and believes that it is the intention of said defendants to remove at the earliest possible date the timber from all of the land owned by them in Tunica County, Mississippi and permit said land to be sold to the State of Mississippi for taxes and that before the time of redemption has expired and before the title vests in the State of Mississippi all of said timber [fol. 4] will have been removed from said lands, and the state, county, levee and drainage districts will be deprived of taxes now due and legally assessed against said lands.

Complainant is informed and believes that said taxes are a debt due by said defendants to the State, county, levee and drainage districts, and that said taxes are recoverable by suit at the instance of the Attorney General.

Complainant further shows that said defendants are also the owners of the following described lands in Tunica County, Mississippi, towit: All of Section 1; the SW¼ of the NE¼ of Section 3, the NW¼ of the SE¼ of Section 3, except railroad right-of-way; the N½ of the NE¼ of Section 3; the SE¼ of the NE¼ of Section 3; the NE¼ of the SE¼ of Section 3; the S½ of the SE¼ of Section 3; the NE¼ of Section 10; the E½ of the SE¼ of Section 10; all of Section 11; the NE¼ of the NE¼ of Section 15; the S½ of the NE¼ Section 15; the SE¼ of Section 15; all in Township 4, of Range 10 West.

Complainant further shows to the Court that the defendants are now engaged in cutting and removing the timber from said lands described in the preceding paragraph and that if permitted to cut and remove said timber the remaining property of defendants in the state of Mississippi will not be sufficient to satisfy the debts due

from said defendants, and that the state, county, levee and drainage district will suffer irreparable injury and loss and that they have no just, adequate and complete remedy at law for the collection of said taxes after the timber on said lands have been removed therefrom.

Complainant further shows to the court that said defendants, and each of them, are non residents of this state; [fol. 5] that they, and each of them, are in default for public money due from them and each of them as principals to the state, county, Yazoo-Mississippi Delta Levee District and the Lake Cormorant Drainage District.

Therefore, the prayer of the petitioner is that all proper process of this court issue, making each of the above named parties defendants hereto, returnable to the September Rules 1929 of this court, and that they and each of them be required to plead, answer or demur to this bill, answer under oath being waived, and that upon a final hearing, that complainant be awarded a decree against said defendants and each of them for the total amount of taxes due, together with interest, damages and costs, as provided by law.

Complainant further prays that an injunction issue from this Honorable Court restraining the above named defendants and each of them, their agents and employees, from cutting or removing any timber from any of the lands described herein both the lands referred to on page one hereof and the lands referred to on page 3 hereof, until all taxes due by said defendants and each of them to the State of Mississippi, the County of Tunica, the Yazoo-Mississippi Delta Levee District and the Lake Cormorant Drainage District have been paid in full, together with damages and costs, as required by law, and that upon a final hearing of said cause they be perpetually enjoined and restrained from removing and disposing of any of the timber on any of the above described lands until said taxes, damages and costs have been paid, and that a decree be entered against said defendants jointly and severally in the sum of $7,483.22, together with all costs herein expended.

[fol. 6] Complainants further prays that a writ of attachment issue by this Honorable Court and that all of the property owned by said defendants, or any of them, or a sufficient amount thereof, be seized and held to wait the

final disposition of this case, to satisfy such decree or judgment as will be rendered herein, and for such other further and more general relief as to the court may seem just and proper; and if complainant has not prayed for the proper relief, he prays the court to enter such decree and grant such relief as to the Court may seem just and proper, and in duty bound your petitioner will ever pray, etc.

Rush H. Knox, Attorney General.

Duly sworn to by Rush H. Knox. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 7] EXHIBIT "A" TO BILL OF COMPLAINT

Sale of Lands for Taxes

STATE OF MISSISSIPPI,
County of Tunica:

I, T. E. Salmon, Sheriff and Tax Collector of the County of Tunica, in said State will sell on the First Monday of April, A. D. 1929, at the west front door of the Courthouse of said County, in the Town of Tunica, of the County of Tunica, Mississippi, to the highest bidder or bidders for cash, if any there be, all of the following described lands situated in the County of Tunica on which the following taxes remain unpaid at that date to-wit:

A. B. Nickey & Sons: NE¼ and NE¼ of NW¼ and S½ of the NW¼ and S½, 3 A. Strip, Section 2, Township 4 Range 10, 603 acres; State Tax $50.11; General County Tax $73.60; Highway Road Bond Interest $4.70; Y. M. D. Levee Advalorum and Brunswick Extension $37.02; Y. M. D. Levee Acreage $12.06; Beat No. 2 Advalorum Road $59.51; Lake Cormorant Drainage District $1322.69; Printer fee $.40 Clerks fee $.60; Sheriffs fee $1.25; Damages $155.97, Total $1717.91.

A. B. Nickey & Sons: All Frac. N. of C. W. River, Section 23, Township 4, Range 10, 606 acres; State Tax 228.78; General County Tax $33.60 Highway Road Bond

Interest $21.45; Y. M. D. Levee Advalorum and Brunswick Extension $169.01; Y. M. D. Levee Acreage $12.12; Beat No. 2 Advalorum Road $271.67; Lake Cormorant Drainage District $596.06; printers fee $.40 clerks fee $.60; Sheriffs Fee $1.25; Damages $163.51, Total $1800.86.

[fol. 8] A. B. Nickey & Sons: NW½ N of C. W. River, Section 24, Township 4, Range 10, 122 acres; State Tax $47.66 General County Tax $70.01; Highway Road Bond Interest $4.47; Y. M. D. Levee Advalorum and Brunswick Extension $35.21; Y. M. D. Levee Acreage $2.44; Beat No. 2 Advalorum Road $56.60; Lake Cormorant Drainage District $77.77; Printer's Fee $.40; Clerks Fee $.60 Sheriff's Fee $1.25; Damages $29.42; Total $325.83.

A. B. Nickey & Sons: W½, Section 12, Township 4 Range 10, 320 acres; State Tax $54.59; General County Tax $80.18; Highway Road Bond interest $5.12; Y. M. D. Levee Advalorum and Brunswick Extension $40.33; Y. M. D. Levee Acreage $6.40; Beat No. 2 Advalorum $64.83; Lake Cormorant Drainage District $612.00; Printer's Fee $.40; Clerk's Fee $.60; Sheriff's fee $1.25; Damages $86.35; Total $952.05.

A. B. Nickey & Sons: W½, Section 13, Township 4 Range 10, 321 acres; State Tax $73.86; General County Tax $108.48; Highway Road Bond Interest $6.92; Y. M. D. Levee Advalorum and Brunswick Extension $54.56; Y. M. D. Levee Acreage $6.42; Beat No. 2 Advalorum Road $87.71; Lake Cormorant Drainage District $306.00; Printer's fee $.40; Clerk's Fee $.60; Sheriff's Fee $1.25; Damages $64.40; Total $710.60.

A. B. Nickey & Sons: All of Section 14, Township 4 Range 10, 641 acres; State Tax $191.81; General County [fol. 9] Tax $281.72; Highway Road Bond Interest $17.98; Y. M. D. Levee Advalorum and Brunswick Extension $141.70; Y. M. D. Levee Acreage $12.82; Beat No. 2 Advalorum Road $227.78; Lake Cormorant Drainage District $920.48; Printer's fee $.40; Clerk's Fee $.60; Sheriff Fee $1.25; Damages $179.43; Total $1,975.97.

Grand Total: State Tax $646.81; General County Tax $950.00; Highway Road Bond Interest $60.64; Y. M. D. Levee Advalorum and Brunswick Extension $477.83; Beat No. 2 Advalorum Road $768.10; Y. M. D. Levee Acreage $52.26; Lake Cormorant Drainage District $3,835.00;

Printer's Fee $2.40; Clerk's Fee $3.60; Sheriff's Fee $7.50; Damages $679.08, Great Grant Total $7,483.22.

T. E. Salmon, Sheriff & Tax Collector, by H. C. Webb, D. S.

[File endorsement omitted.]

[fol. 10] IN CHANCERY COURT OF TUNICA COUNTY

WRIT OF ATTACHMENT AGAINST DEBTOR—Returned and Filed July 24, 1929

The State of Mississippi to the Sheriff or any Constable of Tunica County, Greeting:

Whereas, State of Mississippi, ex Rel. Rush H. Knox, Attorney-General, hath complained on oath to the Chancery Court of the County of Tunica in said State, by Bill of Complaint, which has been duly filed, that A. B. Nickey, S. N. Nickey, W. E. Nickey and O. L. Nickey, a co-partnership operating and doing business as A. B. Nickey & Sons are justly indebted to the said State of Mississippi to the amount of ($7,483.22) Seven Thousand four hundred eighty-three and 22/100 Dollars, and that the said Defendants are nonresident of this State; and the land of said debtor being subject of said suit;

We therefore command you that you attach the said defendants named above by their real estate in your county, to the value of said demand and costs of suit, and that you safely keep the same according to law, so as to compel the said defendants to appear before the said Chancery Court, at Rules to be held at the Courthouse in the Town of Tunica in and for said County of Tunica, on the second Monday of September, A. D. 1929, to answer the above complaint.

And that you summon the said A. B. Nickey, S. N. Nickey, W. E. Nickey, and O. L. Nickey if to be found in your County, to appear and answer accordingly; and have there then this writ, with your proceedings thereon.

Given under my hand and official seal, and issued this 23rd day of July, A. D. 1929.

L. C. Shannon, Chancery Clerk, Tunica County, Miss. (Seal.)

[fol. 11] I have this day executed the within writ by going on the land of defendants and there declared that I attached the following land at the suit of plaintiff: NE½ and NE¼ of NW¼ and S½ of NW¼ and S½ of Sec. 2, and a 3 acre strip in said Sec. 2; all that part Sec. 23 lying North of Coldwater river; W½ of Sec. 12; that part of NW¼ of Sec. 24 lying North of Coldwater river; W½ of Sec. 13, all of Sec. 14; all of Sec. 1; SW¼ of NE¼ of Sec. 3; NW¼ of SE¼ of Sec. 3; N½ of NE¼ of Sec. 3; SE¼ of NE¼ of Sec. 3; NE¼ of SE¼ of Sec. 3; S½ of SE¼ of Sec. 3; NE¼ of Sec. 10; E½ of SE¼ of Sec. 10; all of Sec. 11; NE¼ of NE¼ of Sec. 15; S½ of NE¼ of Sec. 15; SE¼ of Sec. 15; all in Township 4, Range 10 West, in Tunica County, Mississippi, the said land being unoccupied by the defendants.

This the 24th day of July, A. D. 1929.

T. E. Salmon, Sheriff, by H. T. Hall, Deputy Sheriff.

[File endorsement omitted.]

[fol. 12] In Chancery Court of Tunica County

Answer—Filed Nov. 11, 1929—and Amendment Thereto—Filed Nov. 10, 1930

To the Honorable R. E. Jackson, Chancellor of the Seventh Chancery Court District of Mississippi:

Come S. M. Nickey and W. E. Nickey, both residents of Shelby County, Tennessee, and Mrs. Orpha L. Nickey, a resident of Los Angeles County, California, three of the defendants named in the bill herein exhibited, and for their answer to the bill exhibited against them, say:

1. The defendants, S. M. Nickey and W. E. Nickey, are residents and citizens of the State of Tennessee and the

said Mrs. Orpha L. Nickey is a resident of the State of California and the- neither they nor either of them has ever been a resident of the State of Mississippi.

2. These defendants say that A. B. Nickey, one of the defendants named in said bill, has been dead since the year 19—, that he was never a resident of the State of Mississippi and was not living at the time the property mentioned in said bill was attempted to be assessed for purposes of taxation.

3. These defendants deny that they constitute a co-partnership, and they say that they are the owners of both tracts of lands mentioned in said bill but they hold it as tenants in common, the share formerly belonging to the said A. B. Nickey having passed to them by his will in the year 19—.

[fol. 13] 4. These defendants say that they were never served with any personal process nor did they have any legal notice of the alleged assessment of said property by the Board of Supervisors of Tunica County, Mississippi, nor did they enter any appearance in any proceeding attempting to make such assessment or levy, nor did they otherwise submit themselves to the jurisdiction of said Board of Supervisors in so attempting to make said assessment and levy so as to enable said Board of Supervisors or any other taxing authority in the State of Mississippi to acquire jurisdiction of these defendants or either of them so as to give either of them any such legal notice as will support a personal judgment against them or either of them so as to make the debt set forth in the bill a valid and subsisting legal claim against either of these defendants personally.

5. The defendants further say since said Board of Supervisors and other taxing authorities in the State of Mississippi have acquired no jurisdiction of the person of either of these defendants, if this Honorable Court should render a personal decree against them or either of them for the alleged debts set forth in said bill, the rendition of such a decree would constitute a taking of the property of these defendants and each of them, without due process of law and would violate the rights of each of these defendants, as guaranteed to them under the Constitutions of the

United States and of the State of Mississippi, relating to such matters and the right to render such personal decree against either of these defendants is denied by each of them.

6. These defendants further say that the Legislature of the State of Mississippi is not vested with the power, under the said provisions of the aforesaid constitutions, to enact any statute which would make the assessment or levy of [fol. 14] any taxes under the laws of the State of Mississippi a debt against a nonresident of the State of Mississippi, without the personal service of process, the appearance of the defendants or the submission of said defendants to the jurisdiction of the taxing authorities of said State and any attempt on the part of the Legislature to pass such a law is a violation of the Constitutions of the United States and of the State of Mississippi and of the rights of these defendants thereunder.

7. These defendants deny that any of the lands mentioned in said bill were duly and legally assessed to the said A. B. Nickey & Sons for purposes of taxation for the year 1928 and the defendants deny that any of said land was legally assessed or any lawful tax levied thereon to any other person or that said land or any part of it became, by reason of any such assessment and levy, subject to any charge for taxation for said year and the defendants say that no such assessment or levy was lawfully made by the Board of Supervisors of Tunica County, Mississippi, or any other proper taxing authority of the State of Mississippi, so as to make any part of said lands subject to any of the charges mentioned in said bill as constituting taxes against it for said year 1928 and these defendants say that said taxing authority did not pursue the proper legal course to acquire jurisdiction over the aforesaid land or any part thereof so as to make the alleged assessment and levy mentioned in said bill and the taxes alleged to be due thereunder, a lawful charge against said lands of either of these defendants.

8. These defendants further say that, having failed to make any valid assessment or levy of taxes against said lands for the year 1928, the Board of Supervisors had no authority to make any levy of said taxes for said year

[fol. 15] and that their attempt so to do is void and is not sufficient to constitute the alleged debts a lawful charge against said lands or any part of them.

9. These defendants say that the complainant in this case has no right to recover of these defendants or either of them any alleged sum of money due Lake Cormorant Drainage District as taxes, or any printer's fee, or clerk's fee, or any sheriff's fee, or any damages of any kind whatever, as a debt against the defendants or either of them, for the reason that none of the aforesaid drainage taxes or charges come within the purview of the statute making taxes a debt against the person owning the property against which any lawful taxes may be levied and that if any recovery is to be had for any such charges, it must be had in the name of the parties to whom such charges belong and must be recovered by them in an individual capacity and not in the name of the State of Mississippi, and for the further reason that said so called drainage taxes are not taxes, but constitute local assessments which bind only the property against which said assessment is made.

10. These defendants say that it is not material to this issue what has been done with any lands in DeSoto County, Mississippi, and is of no concern of the complainant in this case, since said lands are not involved in this suit, but these defendants deny that any lands they own in Tunica County, Mississippi, exclusive of the timber thereon, are worth less than any taxes alleged in this bill to be due against said land.

11. These defendants say that, if they are mistaken in the allegations of this answer, to the effect that the assessment and levy of said taxes, as against these defendants and said land, are void and of no effect, then the bill of the complainant, with the assessment roll to which reference is [fol. 16] made therein, show that said land is worth many times more than any alleged taxes assessed and levied against them, and therefore, the complainant and the Governmental Agency for which he sues have a complete and adequate remedy at law for the collection of such taxes, to which they have not resorted, but that on the contrary, said lands were not offered for sale by the Tax Collector of Tunica County, Mississippi, as provided by law, but that said lands were withdrawn from sale by said Tax Collector

at the instance and under the direction of the complainant and that he prevented a sale of said lands by so directing the Tax Collector not to offer said lands for sale.

12. The defendants deny that the property remaining to them in the State of Mississippi will not be sufficient to satisfy any alleged debt due by them to the State, County, Levee and Drainage Districts, in behalf of which this suit is prosecuted and these defendants deny that either of said *policitcal* subdivisions will suffer irreparable injury or loss, if the timber shall be removed from the second tract of land mentioned in said bill.

13. The defendants deny that any tax has been levied against said land for the year 1928 or that any tax is now due against any part of said land or that any lawful tax against said land remains unpaid or has become delinquent.

14. The defendants deny that there is now due from either of them any lawful taxes against any of said land, in favor of the State of Mississippi, Tunica County, the Yazoo-Mississippi Delta Levee District, Lake Cormorant Drainage District of any taxing district of said County or any costs, damages or any other charge now remains unpaid, for which the complainant in this case is entitled to sue.

[fol. 17] 15. The defendants deny that said land is chiefly valuable on account of the timber growing thereon and if any lawful taxes are now due, have been levied or assessed against said land and these defendants say that the bill and assessment roll to which reference is made therein show that said land, exclusive of the timber and all improvements has a value far in excess of any alleged taxes due against any of said land.

16. These defendants deny that the cutting of any timber on said lands on which the alleged taxes have become a charge will deprive any of the taxing districts mentioned in said bill of any taxes justly due or owing by these defendants or against said lands.

17. These defendants deny that the complainant has any right to restrain the cutting of any timber on the first or second tract of land mentioned in said bill or resort to said second tract of land in any manner whatsoever for the collection of any taxes against the tract of land first named in

said bill and this, whether said taxes are a lawful charge against said first named tract of land or not.

18. The defendants deny that either of them is in default for public money, as principal or in any other capacity.

19. These defendants further say that the complainant in said bill has no right to maintain this action for an injunction against the cutting of said timber on account of any pretended drainage taxes, for the reason, that it is and was the purpose of the levying of such so called taxes to clear and reduce said land to a state of cultivation and to promote agriculture by the use of said land for said purpose.

20. The defendants deny that they are partners, and for further answer to the bill herein exhibited against them say [fol. 18] that said supposed assessment is void as a judgment against them for indefiniteness as to parties defendant.

21. The defendants say that Tunica County embraces only one judicial district and that there was no authority of law for the meetings of the board of supervisors at which all of the proceedings relating to the assessment and levy of the taxes sued for in the complainant's bill, and all such proceedings are void.

Come these defendants and for their amended answer in the above styled cause, by way of amendment, say:

22. Section 8189 of Hemingway's Code of 1927. the section under which this action is prosecuted, is void and of no effect, because it violates the Constitutions of the United States and of the State of Mississippi, in that it deprives these defendants of the right to have the land against which the said taxes are alleged to be due, sold to pay the said alleged debt, which right is a substantial and valuable property right, in that if there is any right to elect which remedy, the remedy by sale of said land, or the remedy by action in the nature of a personal action, shall be pursued by the State to recover said taxes, these defendants have been deprived of their property without due process of law, because the Attorney General advised and directed the tax collector of Tunica County to violate the statutes of the State of Mississippi, by refusing to sell said land for its taxes at the time provided by law, which date of sale was

past when this suit was filed, whereas, it is the universal practice of tax collectors in Mississippi, as it is their mandatory duty under the laws thereof, to offer for sale and sell, on the First Monday in April, after default in the payment of the taxes thereon all lands so in default, to an in-
[fol. 19] dividual purchaser, for the full amount of the taxes thereof, and in default of bids, the statutes of Mississippi operate, and have been construed, to make the State of Mississippi the purchaser thereof, for the full amount of the taxes due thereon, which sale so made, either to an individual purchaser or to the State, constitutes payments in full of the taxes thereon.

23. The said tax collector pursued the course advised and directed by said attorney general, and refused to discharge his said duty in the respects aforesaid, although on the First Monday in April, 1929, at the time provided by law for said sales, the said tax collector offered for sale and sold all other lands in said county, upon which the taxes had not been paid, which lands belonged to a great number of persons, both residents and non-residents of the State of Mississippi, which sale of said other lands operated as payment and as a full discharge of said alleged debts of said other land owners and relieved them of their personal liability therefor, and by their said unequal and oppressive conduct, violated the rights of these defendants under the Constitution of the United States, in the respects that said conduct amounts to a denial by the State of Mississippi and its said officers of the equal protection of the laws of said State, which is secured to these defendants as to all other persons within its jurisdiction and the prosecution of this suit to effect will result in depriving these said defendants of their property, without due process of law, in violation of the constitutions of the United States and of the State of Mississippi.

24. The defendants further say that by reason of the said refusal of said tax collector to perform his said duty in selling said land, he cannot recover his said costs and damages, as sued for herein.

25. The defendants further say that by reason of the wilful and oppressive conduct of said tax collector and at-
[fol. 20] torney general and the refusal of the said tax collector to sell said land, which sale would have resulted

in the payment of said taxes and in the liquidation of said alleged debt, this suit cannot be maintained to effect, as said conduct on the part of the said officers amounted to a refusal to avail themselves of the benefit of a complete payment of said debt, in accordance with the laws of the State of Mississippi and that said action cannot be prosecuted to the annoyance and expense of these defendants.

26. For further answer, these defendants say that Section 8189 of Hemingway's Code of 1927, is void and unenforceable, for the reasons that it provides for no means by which any personal notice shall be given to a property owner in making an assessment of taxes, nor is there any provisions in the statutes or constitution of the State of Mississippi which provides for any summons to compel the personal appearance of any defendant or to support a personal judgment against such defendant, nor is there any authority under the statutes or constitution of the State of Mississippi vested in the tax collector, the board of supervisors or the Chancery court the power to so summons such defendant or render a personal judgment against him in so making said assessment of property under the general revenue statutes or the drainage statutes of the State of Mississippi, and your defendants say that, in making drainage assessments, the Chancery court proceeded under a purely statutory power, and as such a court, can exercise no function beyond that which is conferred by said drainage statutes, nor do the *the* constitution and statutes of the State of Mississippi vest any judicial power in the tax collector or the board of supervisors so to do.

[fol. 21] Now having fully answered, the defendants pray that they may be dismissed with their reasonable cost.

Gore & Gore, Solicitors for Defendants.

[File endorsements omitted.]

[fol. 22] In Chancery Court of Tunica County

Bond—Filed Aug. 31, 1929

We, Mrs. Orpha L. Nickey, S. M. Nickey and W. E. Nickey, Principals and the United States Fidelity & Guaranty Company of Baltimore, Md., surety, are held and bound to pay to the State of Mississippi the sum of Fifteen

Thousand Dollars, unless the said principals shall satisfy and decree which may be recovered against them by the State of Mississippi, ex Rel. Rush H. Knox, Attorney General in that certain attachment suit filed against the said principals for $7,483.22 returnable before the Chancery Clerk of the above named County on the 9th day of December, 1929.

Witness our hands the 15th day of August, 1929.

Mrs. Orpha L. Nickey, by W. E. Nickey, Attorney-in-fact. W. E. Nickey, S. M. Nickey, by W. E. Nickey, Attorney-in-fact. United States Fidelity & Guaranty Co., by R. L. Pearson, Agt. & Atty.-in-fact. (Seal.)

Countersigned:

United States Fidelity & Guaranty Co. W. A. Cox, Resident Agent, State of Mississippi.

The foregoing bond is hereby approved this the 31st day of August, 1929.

L. C. Shannon, Chancery Clerk. (Seal.)

[File endorsement omitted.]

[fol. 23] In Chancery Court of Tunica County.

Statement of Evidence

By Mr. Jaquith: The complainants offer in evidence notice given by the tax assessor of Tunica County, Mississippi, July 6th, 1928, as it appears in the official record of Tunica Times Democrat, Vol. 25, No. 32, dated July 12th, 1928, same volume, number 33, dated July 19th, 1928, same volume, number 34, July 26th, 1928, and same volume, number 35, August 2nd, 1928, as exhibit number 1.

By Mr. Gore: The defendants object to the introduction of this notice on the ground that the paper in which notice was published is not competent evidence and not admissible in evidence to prove the validity of the notice.

By the Court: I will reserve the ruling.

[fol. 24] EXHIBIT #1

Assessor's Notice to Taxpayers of Filing of the Personal and Real Estate Rolls

Pursuant to the requirements of Section 4303, Code of 1906, I, John A. Veach, Assessor of Tunica County, Mississippi, do hereby give notice that I have returned and filed the 1928, Personal Roll, also the 1928, Realty Roll of said county in the office of the Clerk of the Board of Supervisors of said county, on the 29th, June, 1928, as provided by Section 8, of Chapter 323, of the laws of Mississippi of 1920; and that the Board of Supervisors of said county will immediately, at the July, 1928, meeting proceed to equalize such rolls; and at the August, 1928, meeting of said Board of Supervisors will hear all objections to same.

Witness my signature this the 6th day of July, 1928.

John A. Veach, Tax Assessor of Tunica County, Mississippi.

7-12-3t.

[fol. 25] Mr. Jaquith: The complainant offers in evidence notice signed by the Board of Supervisors of Tunica County, Mississippi, by L. C. Shannon, Clerk, dated July 3rd, 1928, appearing in the Tunica Times Democrat, Vol. 25, number 31, dated July 5th, 1928, same volume, number 32, July 12th, 1928, same volume, number 33, July 19th, 1928, and same volume, number 34, July 26th, 1928, same volume, number 35, August 2nd, 1928, and which notice is directed to the taxpayers of Tunica County, Mississippi, and ask that this be made exhibit 2 by the Complainants.

By Mr. Gore: Defendants object to the introduction of this as evidence of notice for the reason set out in our objection to the notice by the Tax assessor, exhibit 1.

By the Court: Ruling reserved.

By Mr. Dulaney: These copies of paper are filed with the Clerk of the Chancery Court pursuant to law; that can be proven, their identification can be proven by the Clerk.

By Mr. Gore: We waive the proving of that by the testimony of the Chancery Clerk, but still reserve the same objection as to the competency of it as to the matter of establishing the values of the assessment rolls.

By Mr. Sharp: But it is admitted that proof of publication of notice was duly filed with the Chancery Clerk?

By Mr. Gore: Our views on this are that these matters must be established by the minutes of the Board of Super- [fol. 26] visors and that is the only competent source through which this evidence can be established.

By Mr. Sharp: It is agreed that the assessment rolls may be introduced corresponding the exhibits, together with Assessor's affidavit to land roll, dated June 29th, 1928, filed with the Chancery Clerk June 29th, 1928, and the order of the Board of Supervisors made on July 3rd, 1928, properly certified to and pasted on the roll, and the order of State Tax Commission, dated Nov. 3rd, 1928, approving the assessment roll for the year beginning February 1st, 1928, in the manner prescribed by law.

By Mr. Gore: We do object to the order of the State Tax Commission because it ought to be attached to the assessment roll, and for the further reason that the order of the State Tax Commission does not state the facts necessary to give the State Tax Commission jurisdiction over the assessment of Tunica county for the purpose of revising and equalizing assessments as between Tunica and the other counties of the State.

By the Court: Ruling reserved.

[fol. 27] EXHIBIT #2

To the tax-payers of Tunica County, State of Mississippi:

You will please take notice that the assessment of real and personal property on the rolls for 1928 have been changed and corrected by this Board so as to comply with the Laws of this State, and that said revised rolls are now open for examination, and that any objection to any assessment contained in said revised rolls must be made in writing and filed with the Clerk of this Board on or before the first Monday of August, 1928, at his office in the town of Tunica, said County, and that any or all assessments to which no objection is then and there made, will be made final.

This the 3rd day of July, 1928.

The Board of Supervisors of said County, by L. C. Shannon, Clerk of said Board. (Seal.)

[fol. 28] Mr. Jaquith: Complainants introduce in evidence order of the Board of Supervisors made July 3rd, 1928, appearing in Minute Book 13, page 53, which shows that the assessment roll was changed and corrected and directing notice to the tax payers of the filing thereof, and ask that it be made exhibit 3 to testimony of complainants.

Mr. Gore: Defendants object to that for the reason that it does not retain to the board jurisdiction over the subject matter to be considered by the Board as provided by law; we object to it and move to exclude it for the reason that the sheets themselves show on its face that this assessment is for 1927 and 1928 when under the law the assessments should have been made for the years 1928 and 1929 as shown in the order just read by counsel for complainant; we move to suppress and exclude that roll as evidence of this assessment for the reason that it shows on its face the fact that it is for other years than the year 1928.

By Mr. Sharp: The taxes sued for are for 1928 and the orders recite the approval of the roll for 1928. The fact that they used an old printed form which were on hand before the law changed making assessments for 1926 and 1927, we don't think that material.

By the Court: I will reserve the ruling.

[fol. 29] NOTE RE EXHIBIT 3

For Exhibit No. 3, see Exhibit No. 2 on page No. 27, of this record. The two exhibits being identical.

[fol. 30] Mr. Jaquith: We offer in evidence order of Board of Supervisors, shown at page 79 of Minute Book 13, as exhibit 4.

EXHIBIT 4

[fol. 31] STATE OF MISSISSIPPI,
Tunica County:

Be it remembered that on this the 6th day of August A. D. 1928, the same being the first Monday in said month and a day fixed by law for holding a regular meeting of the Board of Supervisors of said County, there was begun and held a regular meeting of said Board in the Courthouse in the Town of Tunica, said County and State, when for said

County there were present: Dr. G. M. Shaw, President, District No. 1; J. L. Harris, District No. 2; S. A. Withers, District No. 3; S. C. Wilson, District No. 2; R. T. Mottley, District No. 5, and, also the following officers were present: L. C. Shannon, Clerk, and T. E. Salmon, Sheriff.

It is ordered that the board do now adjourn until Tuesday Morning, August 7th, 1928, at 9 o'clock.

G. M. Shaw, President.

Tuesday Morning, August 7th, 1928, the board met pursuant to adjournment when there were present the following members, to-wit: Dr. G. M. Shaw, District No. 1; J. L. Harris, District No. 2; S. A. Withers, District No. 3; S. C. Wilson, District No. 4; R. T. Mottley, District No. 5, and also the following officers were present: L. C. Shannon, Clerk, and T. E. Salmon, Sheriff.

It is ordered that the Board do now adjourn until tomorrow morning at 9 o'clock.

G. M. Shaw, President.

[fol. 32] Wednesday Morning, August 8th, 1928, the board met pursuant to adjournment; present for said County were the following members: Dr. G. M. Shaw, President, District No. 1; S. A. Withers, District No. 3; S. C. Wilson, District No. 4; R. T. Mottley, District No. 5; also the following officers were present: L. C. Shannon, Clerk and T. E. Salmon, Sheriff.

It is ordered that the board do now adjourn until Thursday Morning, August 9th, 1928, at 9 o'clock.

G. M. Shaw, President.

Thursday Morning, August 9th, 1928, the board met pursuant to adjournment when for said county there were present the following members to-wit: Dr. G. M. Shaw, President, District No. 1; S. A. Withers, District No. 3; S. C. Wilson, District No. 4; R. T. Mottley, District No. 5; also the following officers were present: L. C. Shannon, Clerk, and T. E. Salmon, Sheriff.

[fol. 33] It is ordered that the Board do now adjourn to meet again at 9 o'clock A. M., on Tuesday, the 21st day of August, 1928, at the Board of Supervisors Office in the Courthouse of Tunica County, Mississippi, in the Town of Tunica, for the purpose of hearing complaints to the assessment rolls of said County for the year 1928-1929 as equal-

ized and the entering of such orderes on such complaints as may be filed as to the said Board may seem proper and for the purpose of finally approving the Land Assessment Roll of the year 1928-1929 and the Personal Assessment Roll of the year 1928 and the doing of all other acts and making of all other orderes with reference to said assessment rolls as to said Board may seem necessary and proper.

This August 9th, 1928.

G. M. Shaw, President.

[fol. 34] Pursuant to the above and foregoing order it is ordered that the board do now adjourn until Tuesday Morning at 9 o'clock, August 21st, 1928.

Dr. G. M. Shaw, President.

Tuesday Morning, August 21, 1928, the board met pursuant to adjournment when for said County there were present; Dr. G. M. Shaw, President, Beat No. 1; S. A. Withers, Beat No. 3; S. C. Wilson, Beat No. 4; R. T. Mottley, Beat No. 5; J. L. Harris, Beat No. 2; absent: — Officers. Present: L. C. Shannon, Clerk, and T. E. Salmon, Sheriff.

[fol. 35] Mr. Jaquith: Complainants offer in evidence the order of the Board of Supervisors, as shown in Minute Book 13, pages 80 and 81, as exhibit No. 5.

Mr. Gore: Defendants object to the introduction of that order for the reason that the order and notice does not contain sufficient jurisdictional facts to constitute this a valid assessment of taxes.

By the Court: Ruling reserved.

EXHIBIT 5

[fol. 36] 1928

Order of the Board of Supervisors

SUPERVISORS COURT, AUGUST, 1928, TERM

STATE OF MISSISSIPPI,
Tunica County:

The Board of Supervisors of said County, after having given notice to the Tax payers of said County by publishing the following:

"To the Tax Payers of Tunica County, State of Mississippi:

You will please take notice that the assessment of real and personal property on the rolls for 1928 have been changed and corrected by this Board so as to comply with the Laws of this State, and that said revised rolls are now open for examination, and that any objection to any assessments contained in said revised rolls must be made in writing and filed with the Clerk of this Board on or before the First Monday of August 1928, at his office in the Town of Tunica said County and that any or all assessments to which no objection is then and there made will be made final.

This 3rd day of July, 1928.

The Board of Supervisors of said County, by L. C. Shannon, Clerk of said Board.

In the Tunica Times Democrat, a newspaper located and published at Tunica, Mississippi which notice was published and circulated by said newspaper on the 5th day of July, 1928, in said county and was on the 3rd day of July, 1928, posted in the court house in the town of Tunica in said County by said Clerk.

Met in the supervisors room in *in* the courthouse on the 6th day of August 1928, being the first Monday of August 1928 and in continued session from day to day, and at adjourned meeting held on August 21st; 1928, hearing objec- [fol. 37] tions to assessments, taking testimony of witnesses and examining books, records and papers with reference to the assessments of property. It made such changes in the assessment (as fixed by it on the rolls at its July 1928 meeting) that it was satisfied should be made to fix the assessments of property at its actual value so as to establish an equality and uniformity of taxation according to the value among the tax payers of said county. Now being satisfied that said assessment rolls contain assessments fair, equal, uniform and just according to the value of the real and personal property therein described, it is therefore hereby ordered that the said rolls and the assessments therein now contained be and they are hereby accepted, approved and made final and that the final recapitulation of the said assessment rolls be certified to the State Tax Commission on the blabks furnished by it, as required by law.

G. M. Shaw, President.

[fol. 38] It is ordered that the board do now adjourn until its next regular meeting.

G. M. Shaw, President.

[fol. 39] Mr. Jaquith: Complainants next offer in evidence order of State Tax Commission, which appears on the minutes of the Board of Supervisors of Tunica County, Mississippi, in Minute Book 13, at page 115, as exhibit 6 (six).

Mr. Gore: We object to the introduction of that order for the reason that it does not contain facts necessary to give the State Tax Commission jurisdiction to approve assessments rolls of Tunica County.

By the Court: Ruling reserved.

EXHIBIT 6

[fol. 40] STATE OF MISSISSIPPI,
County of Tunica:

Be it remembered that on this the 5th day of November A. D. 1928, the same being the first Monday in said month and a day fixed by law for holding a regular meeting of the Board of Supervisors of said county, there was begun and held a regular meeting of said Board in the Courthouse in the Town of Tunica, said County and State when for said County there were present Dr. G. M. Shaw, President District No. 1; J. L. Harris, District No. 2; S. A. Withers, District No. 3; S. C. Wilson, District No. 4; R. T. Mottley, District No. 5; also the following officers were present: T. E. Salmon, Sheriff and L. C. Shannon, Clerk.

[fol. 41] Order of State Tax Commission

It appearing to the satisfaction of the State Tax Commission of the State of Mississippi, after visiting the several counties of the State, conferring with the Assessors thereof, and studying the values of the various classes of properties therein, the economic conditions thereof, and the methods employed by the Assessors and Supervisors in making and equalizing the assessments thereof, and after making a careful examination of the recapitulations of the assessment rolls of real and personal properties of the sev-

eral counties and a comparison of the assessments therein contained, that the assessments of the various classes of real and personal properties on said assessment rolls of Tunica County for the tax year 1928, as shown by the foregoing statement (appearing on the reverse side hereof) are equal and uniform with those in the other counties of the State; it is therefore ordered that the Chairman of this Commission mail to the Board of Supervisors of said County a notice that the assessments of said county are acceptable to said Commission, and that copies of said rolls be made and certified to the Tax Collector and to this Commissions in accordance with the requirements of Chapter 323, of the Laws of 1920.

Ordered and adjudged, this the 19 day of September, 1928.

Chairman's Certificate

I, L. C. Franklin, Chairman of the State Tax Commission of the State of Mississippi do hereby certify that the above is a true and correct copy of an order adopted by the said Commission on the date therein named, and the Board of Supervisors of said County are notified to deal with said roll as required by law, and as directed in said order.

[fol. 42] Witness my signature this the 19 day of September, 1928.

L. C. Franklin, Chairman.

[fol. 43] Mr. Jaquith: Complainants next introduce in evidence order of Board of Supervisors of Tunica County, Mississippi, as the same appears in Minute Book 13, at pages 116, 117 and 118, levying taxes for the fiscal year 1928, and ask that it be marked exhibit 7.

Mr. Gore: We make the same objection to that order as to levying taxes as to the others.

By the Court: Ruling reserved.

Exhibit 7

[fol. 44] In the Matter of the Tax Levy for the Year 1928

It is ordered by the Board that there be and is hereby levied on all the taxable property in Tunica County, Mississippi, a tax for the fiscal year 1928, as follows, towit:

A tax of 75% of the State Tax, being 6 mills on the dollar, on all the taxable property, in Tunica County, Mississippi, for General County purposes.

A tax of 25% of the State Tax, being 2 mills on the dollar, on all the taxable property in Tunica County, Mississippi, for Common School purposes.

A tax of 21.87% of the State Tax, being 1¾ mills on the dollar on all the taxable property in Tunica County, Mississippi, being a tax for the purpose of retiring the bonds and paying the interest on the bonds issued for the construction of the Courthouse.

A tax of 9.37% of the State Tax, being ¾ of a mill on the dollar, on all the taxable property in Tunica County, Mississippi, being a tax for the purpose of retiring the bonds and for the paying of the interest on the bonds issued for the construction of the Main highway.

A tax of 3.12% of the State Tax, being ¼ mill on the dollar on all the taxable property in Tunica County, Mississippi, being a tax for the purpose of paying the interest on the Road Bonds Issued in 1910.

A tax of 75% of the State Tax, being 6 mills on the dollar on all of the taxable property, in Road Dist. No. 2, Tunica County, Mississippi, being a tax for the purpose of maintaining the roads, for the purchase of road machinery, road material and other paraphernalia incidental to road construction and for the payment of salaries to road crew.

[fol. 45] A tax of 43.75% of the State Tax, being 3½ mills on the dollar on all of the taxable property in Special Road Dist. No. 2 of Tunica County, Mississippi, being a tax for the purpose of paying the interest and for the payment of bonds when they become due.

A tax of 21.87% of the State Tax, being 1¾ mills on the dollar on all the taxable property in Tunica County, Mississippi, being a tax for the maintenance of the Agricultural High School, as per schedule attached in budget.

A tax of ¼ mill on the dollar, being 3.12% of the State Tax, on all of the taxable property in Tunica County, Mississippi, being a tax for the purpose of maintaining the Agricultural High School Building, for the construction of additions thereto.

A tax of 6.25% of the State Tax, being ½ mill on the dollar on all the taxable property in Tunica County, Miss.,

being a tax for the purpose of constructing a Gymnasium at the Agri. High School and its equipment necessary thereto.

So ordered this the 5th day of November, 1928.

G. M. Shaw, President.

[fol. 46] It is ordered that the board do now adjourn until its next regular meeting.

G. M. Shaw, President.

[fol. 47] Mr. Jaquith: We introduce the land roll for the purpose of exhibiting to the Court cover of land roll which shows 1928-1929, Tunica County. At the head of sheets contained within the cover shows caption Assessment 1927-28; though the pages numbered 1 to 86, inclusive show for the years 1927-28 the remainder of the pages being 87 to 122, inclusive, which included recapitulation, shows for the year 1928-29. Pages 123 and 124 show 1927-28. The assessment for the lands in controversy in this case appear on line 4 of page 7, which bears caption for the years 1927-28; all the lands against which taxes herein sought to be recovered appear under caption 1927-28.

By Mr. Gore: We object to the introduction of this statement outside of this assessment roll because it is not competent to establish this as assessment roll for the year 1927-28.

Mr. Jaquith: At the time of the introduction of the roll there are two notices pasted on cover not mentioned and which are now introduced as a part of the roll; the order of the Board of Supervisors made at the adjourned August 1928 meeting which is certified to by the Clerk and pasted on the roll, at the head of which is 1928, Order Board of Supervisors August 1928 term.

Mr. Gore: That is objected to because the order is pasted in the back of the roll is not permissible in evidence; these facts should be proven by the minutes of the Board of Supervisors.

Mr. Jaquith: The order pasted to the assessment roll contains the seal of the Chancery Clerk and his signature. We also introduce certified copy, under the seal of the [fol. 48] Chancery Clerk of Tunica County, Mississippi, of the order of State Tax Commission, dated Sept. 19th,

1928 which has been heretofore introduced as part of the minutes of the Board of Supervisors as appearing on page 115 of Minute Book 13, as exhibit 10.

Mr. Gore: That is also objected to for the same reason.

By the Court: Ruling reserved.

NOTE RE EXHIBIT 10

See pages 41-42 of this record for this exhibit which is previously given under Exhibit No. 6.

[fol. 49] AGREEMENT AS TO CERTAIN FACTS

Mr. Dulaney: It is agreed and admitted that the land assessment roll of Tunica County, Mississippi for the year 1928, which has been introduced, was duly certified to by the Clerk of the Chancery Court of Tunica County, Mississippi and delivered to the Sheriff of said county in the manner and form and as required by law and the Sheriff of said county proceeded to collect and did collect the taxes from said roll for the year 1928.

It is further agreed that on February 1st, 1928, S. M. Nickey, W. E. Nickey and Mrs. O. L. Nickey were the owners of the land described in the bill of complaint, the taxes on which are sought to be recovered in this suit and that they were the owners of said lands as tenants in common. Mr. S. M. Nickey and Mr. W. E. Nickey being owners by their deeds and Mrs. O. L. Nickey being the owners of an undivided one third interest in it under the will of her husband, A. B. Nickey who is now deceased and who died a year prior to February 1st, 1928.

[fol. 50] Mr. JOHN BEACH, a witness for the complainants, being first duly sworn, testified on oath as follows:

Direct examination.

By Mr. Dulaney:

Q. You are the tax assessor of Tunica County, Mississippi?

A. Yes sir.

Q. You were the tax assessor of this county in 1928?

A. Yes sir.

Q. The roll, land assessment roll for Tunica county for the years 1928-29 were originally prepared by you?

A. Yes sir.

Q. That is the roll that has been introduced here this morning?

A. Yes sir.

By Mr. Gore: We object to his testimony in contradiction of what the record shows. He cannot impeach his own act.

By the Court: Ruling reserved.

By Mr. Dulaney:

Q. Did you make up the assessment roll of Tunica county for the year 1928?

A. I did.

Q. Mr. Beach the roll that has been introduced shows a number of items of land assessed to A. B. Nickey and sons, do you recall that to be a fact?

A. Yes sir.

Q. State whether or not before the filing of that assessment roll you had any conference with any one who purported to represent or assumed to represent the owners of the lands which are assessed on that roll to A. B. Nickey & Sons?

A. I did, with Mr. Landgrebe.

Q. The gentleman who is present?

A. Yes sir.

Q. State if you know his connection with A. B. Nickey & Sons, the defendants in this case?

A. Well, Mr. Landgrebe has been looking after their taxes down here for some years; on several occasions he [fol. 51] had been down here and asked me about the taxes and assessments and the valuation placed thereon, and in this particular instance he was down here, I don't remember the date, but he passed my office; he had been up in the court room and passed my office and I saw him; I had mailed blanks out to him earlier in the spring and had not gotten any returns from him so I called his attention to assessments and asked something about valuations and I told him it was about same as before, so that was about all that was said; he said he guessed there was nothing to be done about it.

Q. Where was that conversation?

A. Up stairs in my office.

Q. In this building?

A. Yes, sir.

Q. You refer to blanks you had mailed out, what blanks do you refer to?

By Mr. Gore: We object to the contents of the blanks; if you have copies you might introduce them; don't think that competent.

By Mr. Dulaney:

Q. Have you copy of blanks mailed out?

A. I have copy of some forms of blanks which I mailed out every year, required by tax assessors all over the State to mail these out to residents other than in the county; they are non-residents; I got their address from the Sheriff's office and the requirement of law is to mail out these blanks and I mail them out every year to everybody.

Q. State whether or not the blanks you mailed out were the regular land assessment blanks for the year 1928 that you were required to mail out?

By Mr. Gore: We object to any testimony with reference to the tax assessment blanks in the absence of any notice to us to produce those mailed to us. We make the further objection that any appearance or alleged appearance of waiver by statements of these defendants to the jurisdiction of the Board of Supervisors must affirmatively appear [fol. 52] to have been adjudicated by the Board, evidenced by its minutes, and this must have been done in order to fasten any personal liability on these defendants for any part of this tax.

By Mr. Sharp: We are not claiming a personal judgment; our contention is, among others, that when these people acquired, owned and operated it they took it with full knowledge of the laws of the State of Mississippi of their right to be heard, date when equalization took place, as provided by law; had knowledge of the law giving them the right to be heard at specified times. Second: That even though ignorance of the law excused them we are not attempting now to enforce that assessment as a personal judgment, but we are bringing them in here now to give them their day in Court.

By the Court: I will reserve the ruling.

By Mr. Dulaney:

Q. Where did you get these blanks that you mailed to the taxpayers?

A. Well, they are blanks distributed by the State Tax Commission and printed by the Mississippi Printing Co.

Q. By whom are the forms printed; by the State Tax Commission?

A. Yes sir, they have authority to prescribe the forms.

Q. To whom do you mail these out?

A. I mailed these as well as I remember to the Green River Lumber Co. care Green River Lumber Co.

Q. At what point?

A. Memphis, Tenn.

Q. Do you know who the parties interested in the Green River Lumber Company are?

A. Well, no sir, I do not, I don't know any of them personally.

[fol. 33] Q. How did you happen to mail the blanks to A. B. Nickey & Sons, care Green River Lumber Co.?

A. Personal assessments have always been that way and I sent the personal blanks with the land blanks.

Q. Were the personal blanks returned for this particular year?

A. I don't recall whether they were or not; I don't believe they were; land blanks were not.

Q. Mr. Beach I notice in the assessment roll, number of pages headed 1927-28 and number of pages headed 1928-29, could you explain how that happened?

By Mr. Gore: We object to that on the ground that he cannot impeach his own record.

By the Court: Ruling reserved.

A. We didn't have enough blanks and these other blanks were used by the deputies in making it up; we knew this at the time the rolls were made; didn't think anything would come up about the validity of the roll.

Mr. Dulaney: Take the witness.

Cross-examination.

By Mr. Gore:

Q. Mr. Beach were you here in July when the Board of Supervisors considered this roll?

A. Yes sir, I was.

Q. How long did you stay there with them in July?

A. I was here with them the entire session.

Q. How many days were they in session?

A. I cannot recall just how many days it was.

Q. Now for your information I will state the minutes appearing at page 359 shows they adjourned the 30th day of July, I want to know if it is not a fact that in making up this roll, the figures in black ink through which lines w-re [fol. 54] drawn, say, for instance, line 1, page 9 of this assessment roll, if the figures through which pen was drawn, $5,111.00 were your figures and your assessment?

A. Yes, sir.

Q. And the figures in column 5, page 9—$9,232.00 are the values as fixed by the Board of Supervisors?

A. Yes, sir.

Q. Now, so on through lines 9, 10, 11 and 12 the figures through which pen marks have been drawn are your figures and the other figures are revisions made afterwards?

A. Yes, sir, by the Board of Supervisors?

Q. This roll contains 124 pages and I will ask you if it is not a fact that these revisions occure practically all the way through this roll?

A. Yes, sir.

Q. Now I want to ask you if these entries of these other figures were not made by the Clerk after the Board of Supervisors adjourned, and if it would not have been a physical impossibility for this to have been done within the two days and the work done that was done?

By Mr. Sharp: We object to that; the roll speaks for itself.

By the Court: Ruling reserved.

A. Now that calls for an explanation there because as well as I remember in 1928 on all uncleared land in the county the State Tax Commission gave us a raise and that took in approximately 140,000 acres of land; that is what we got, $1.00 flat on all uncleared land in the county, and this was to be figured, in column 11 and 12 here, in column 11 number of thousand feet board measure timber——interrupted

By Br. Gore: I asked you is it not a physical impossibility and was it not a physical impossibility for all these corrections to have been made in two days, and if you don't know as a matter of fact that these figures were made and put on the roll by the Clerk after the Board of Supervisors adjourned; is that or not a fact?

A. They were not put on——

[fol. 55] Q. Is it a fact or not?

A. What?

Q. That these figures were made up and put on there by the clerk after the Board adjourned?

A. No they were not, not these in column- 11 and 12.

Q. Which ones were?

A. Red figures were made by order of the State Tax Commission.

Q. Who made the figures; who did the work and made these figures and when were they made?

A. Mr. Shannon made figures here.

Q. When? Was it after the Board adjourned?

A. These figures were made after the Board adjourned in the total column. And these figures were put down by me at the July meeting of the Board of Supervisors.

Q. After adjournment?

A. While in session.

Q. You are talking about the figures in columns 10, 11 and 12?

A. Yes, sir.

Q. They were made by you before the Board adjourned at its July meeting?

A. Yes, sir.

Q. Why didn't you put them down that way to start with?

A. Extra assessment of timber; the Board had ordered timber assessment over the county and I asked for timber to be estimated.

Q. Cruised?

A. Yes, sir, and this timber cruise was put on at the July meeting of the Board in columns 11 and 12.

Q. Why was it you didn't put this on before you filed the roll?

A. I didn't have the information until the cruise was made and it was not made until June.

Q. But the figures in column 5 and in column 10 were made after the adjournment of the Board by the Clerk: he didn't work on it at the same time?

A. No, sir, they were made afterwards in column 5.

[fol. 56] Q. Now that is also true of column 1 Mr. Beach?

A. Yes, sir.

Q. That is also true under heading "Road District No. 2—$9,232.00 valuation and that was put there by Mr. Shannon after the Board adjourned?

A. Yes, sir.

Q. He is the Chancery Clerk?

A. Yes, sir.

Q. Now with reference to Mr. Landgrebe you have no recollection that he didn't return the land assessment blank for 1928 to you?

A. Yes, sir, he did not.

Q. You don't know when you had this conversation?

A. No, sir.

Q. He didn't tell you to make the assessment of A. B. Nickey & Sons at any figure?

A. He didn't tell me.

Q. You are not sure about the time of the year?

A. Well, along about May or June.

Q. Didn't you tell Mr. Dulaney you didn't know what time?

A. I don't know, but think in May.

Q. You don't know whether it was the year 1928 or not?

A. Yes, sir.

Q. What was the occasion for his coming to your office?

A. I called him by; he was passing through the hall.

Q. You don't know whether he was authorized by any of the Nickeys to turn in the assessment at all?

A. I don't except -h-t he had been heretofore doing that.

Q. When?

A. On several occasions he had made statements down here of the real estate and the Green River Lumber Co.

Q. The Green River Lumber Company a corporation?

A. I don't know.

Q. Now what was it he said to you about this, is your statement correct that he asked you what the valuation was

[fol. 57] and you told him about as it had been and he walked off, that is substantially what was said?

A. I called him by the office and told him it was getting late and he had not mailed the blanks in and he discussed the values, as to what other people were giving in at.

Q. He didn't tell you to make any assessment against A. B. Nickey & Sons at all?

A. I don't know. He said that was about right, or something to that effect.

By Mr. Gore: That is all.

Redirect examination.

By Mr. Jaquith:

Q. You have testified on cross-examination that you made certain changes in the roll, what were these changes which you made Mr. Beach?

A. There on timber assessments in column- 11 and 12.

Q. State whether or not these were changes ordered to be made by the Board of Supervisors at its July meeting.

By Mr. Gore: We object to that for the reason that evidence of what the Board ordered should be shown by the minutes.

By the Court: Ruling reserved.

A. They were made at the instance of the Board of Supervisors.

Q. These changes were in separate, individual sections of property?

A. Yes, sir.

Q. In other words these changes w-re made in the number of thousand feet of board measure of timber and also in the valuations excluding timber and improvements on the timbered land and the valuation of the timber thereon were they not?

[fol. 58] By Mr. Gore: Object as leading.

By the Court: Objection sustained, as to leading.

A. Column 10 raised by order of State Tax Commission.

Mr. Gore: We object to that as to order of State Tax Commission.

By Mr. Jacquith:

Q. Now the changes referred to as having been made by Mr. Shannon, state whether or not these were in the total column total valuation of any section of property as shown by the assessment roll as equalized?

A. Yes, sir.

Mr. Jaquith: That is all.

By Mr. Gore:

Q. I notice on line 6, on page 9 of this roll the land there assessed to A. B. Nickey & Sons, acreage changed, who did that?

A. I will tell you about the acreage; I know exactly how it is.

Q. Who made that change there?

A. Mine; if you will notice here 154 acres in uncultivated column, changed back over here to column 9, 270 acres timbered land; changed from one column to another; that is mine.

Q. When did you make that change?

A. These were made at the same time that I made these changes here; column ten made by me too, 9 and 10 and changed from column 13 to column 9, these changes made by me.

Q. Now, for instance, on page 1, column 14 I see figures changed from $1,108.00, your figures, this is struck out and in red ink $1,262.00, assessment of C. S. Gladden?

Mr. Sharp: We object to that; assessment of C. S. Gladden is not involved.

By Mr. Gore: Who made these figures in the column?

A. Mr. Shannon.

Mr. Gore: That is all.

[fol. 59] AGREEMENT AS TO CERTAIN FACTS

By Mr. Dulaney: It is agreed that the Board of Supervisors of Tunica County met July 2nd, 1928, and that its minutes show said Board was in session that day and on July 3rd, 1928, and further, that the minute of said Board show it met for its regular August meeting August 6th and

was in session the 6th, 7th, 8th and 9th, adjourned from day to day until August 9th and that the Board met in regular session on November 5th, 1928, according to its minutes.

By Mr. Gore: It is admitted by counsel for both sides that orders heretofore introduced by complainants in this cause constitute all the orders as made and appearing from the minutes of the Board of Supervisors of Tunica County, Mississippi, relative to the assessment of the lands against which the taxes are sought to be recovered in this suit and that no further orders were made by the Board of Supervisors than those appearing in evidence, but the rolls show changes made in equalization.

By Mr. Jaquith: It is further agreed that the particular assessments of the lands herein involved were not objected to at the August, 1928, meeting by any of the parties then and now owning the lands in controversy.

[fol. 60] By Mr. Jaquith: Complainants offer in evidence order of Levee Board Commissioners, fixing tax rates for the year 1928-29, being a certified copy, certified to by T. J. Collier, Secretary and being offered as exhibit No. 18 by Complainants.

EXHIBIT 18

[fol. 61] Transcript of Order the Board of Levee Commissioners for the Yazoo-Mississippi-Delta Levee District

July 12th Session, 1928.

Be it remembered, That at the above stated Session of the Board of Levee Commissioners for the Yazoo-Mississippi-Delta, an order was then and there made by said Board, which was in the following words and figures, to-wit:

Commissioner Magruder made a motion which was duly seconded by commissioner Blythe that the tax rates for the tax year 1928-1929 be fixed in this Levee District as follows:

1. That the Ad-valorem tax rate in the Counties of De-Soto, Tunica, and Coahoma be fixed at five and one-half mills on the dollar and that the Ad-Valorem tax rate in the Counties of Quitman, Tallahatchie, Sunflower, Leflore, Holmes, Yazoo, and Humphreys be fixed at three and ninety-three one hundred-s mills on the dollar:

2. That the Acreage tax rate be fixed at two cents per acre upon every acre of land within the Levee District;

3. That the tax rate for the Brunswick Extension Levee be fixed — sixteen one hundred-s mills on the dollar in all Counties of the District.

Commissioner Covington made a motion which was duly seconded by Commissioner Parker that the above motion be amended to read as follows:

That the tax rates for the tax year 1928-1929 be fixed in this Levee District for levee purposes as follows:

1. That the Ad-valorem tax rate in the Counties of DeSoto, Tunica, and Coahoma be fixed at five mills on the dollar and that the Ad-valorem tax rate in the Counties of [fol. 62] Quitman, Tallahatchie, Sunflower, Leflore, Holmes, Yazoo, and Humphreys, be fixed at three and fifty-seven one hundred-s mills on the dollar:

2. That the Acreage tax rate be fixed at two cents per acre upon every acre of land within the Levee District.

3. That the tax rate for the Brunswick Extension Levee be fixed at sixteen one hundred-s mills on the dollar in all Counties of the District.

Upon submission of these motions to the action of the Board, the amendment was carried, the vote being seven to three, and the tax rates for the tax year 1928-1929 were declared to be as written in the amended motion above.

I, G. F. Seals, Secretary of the Board of Levee Commissioners for the Yazoo-Mississippi-Delta, do hereby certify that the above and foregoing is a just, true and perfect copy of an order of said Board of Levee Commissioners, made and entered at their July 12th Session, A. D. 1928, as the same appears of record in my office, in the Minute Book F of said Board, on page 281.

Given under my hand and the official seal of said Board of Levee Commissioners for the Yazoo-Mississippi-Delta, this 3rd day of March A. D. 1932.

G. F. Seals, Secretary. (Seal.)

[fol. 63] By Mr. Dulaney: At the request of counsel for the defendants I will state, as a part of the record, that a

conference was held in Jackson, Mississippi between Mr. Ruch Knox, then Attorney General, E. C. Sharp, Assistant Attorney General and myself in regard to the subject matter of this suit, sometime prior to the regular time for selling land for taxes in 1929, and at a conference it was agreed that on my return to Tunica I would request the Tax collector of Tunica County not to make sale of the lands described in the Bill of Compliant in this case for the recovery of taxes on which bill is filed, and that in accordance with that request no sale has been made by the Tax collector of Tunica County, Mississippi, of these lands. It is true they were advertised for sale on First Monday of April, 1929, this request was made perhaps a week or so before that date, date for sale, for the taxes for which this suit is now being prosecuted.

Mr. Dulaney: The complainants rest.

[fol. 64] By Mr. Gore: The defendants now make motion that they be permitted to amend, which amendment proposed will be reduced to writing.

By Mr. Sharp: To which we object.

Br. Mr. Gore: We rest.

This cause came on for further hearing on this the 8th day of December, 1930, being a regular day of the December, 1930, Term of Court at Tunica, Mississippi, upon motion of Defendants to amend and take further proof, the Hon. R. E. Jackson, Chancellor after hearing argument granted said motion, to which the Complainants objected.

Whereupon the following proceedings were had to-wit:

[fol. 65] AGREEMENT AS TO SALE OF LANDS, ETC.

December 8th, 1930.

By Mr. Gore: It is hereby agreed by and between counsel for the complainants and counsel for the defendants that it is the general custom in the State of Mississippi to make sale of lands on which default in the payment of taxes has been made on the First Monday in April of the year succeeding the assessment of the taxes, and that on the first Monday of April, 1929, all lands in default for the payment of taxes, except the lands belonging to these de-

fendants were offered for sale and sold by the Tax collector of Tunica County, Mississippi.

It is further agreed that the lands of the defendants in default for the payment of taxes in April, 1929, were the only lands in Tunica county delinquent for taxes from which the merchantable timber had been removed between the date of the assessment and date set for the tax sale.

[fol. 66] Mr. C. R. LANDGREBE, a witness for the defendants, being first duly sworn, testified on oath as follows:

Direct examination.

By Mr. Gore:

Q. This is Mr. C. R. Landgrebe?

A. Yes, sir.

Q. Mr. Landgrebe you heard the testimony of Mr. Beach, tax assessor of this county in July when we took proof in this case in reference to a discussion of the taxes against this property between you and him, what have you to say about that, whether it was during the year 1928 or some other time?

A. It was some other time.

Q. When was it?

A. It was four or six years prior to that.

Q. Have you discussed it with him either in 1928 or since that time?

A. I have not.

Mr. Gore: Take the witness.

Cross-examination.

By Mr. Dulaney:

Q. Mr. Landgrebe you represented these defendants in connection with their taxes did you not?

A. I did.

Q. For how long a time have you so represented them?

A. For the past twenty years.

Q. With whom do you deal in making agreements or adjustments with reference to taxes in Tunica county; with what representative of Tunica county do you deal?

A. At such times when I had occasion or took occasion I dealt with the Board of Supervisors at their regular meeting, at the time set for such hearing.

Q. Every two years you would receive notice from the tax assessor?

A. Sometimes we would and sometimes not.

[fol. 67] Q. This notice would ask you to list the value of property?

A. They have such notices, such forms.

Q. When did you last receive one of these forms?

A. I don't recall.

Q. Did you receive one in 1929?

A. I could not say. I don't remember receiving any.

Q. Could you state whether or not you received one in 1928?

A. I don't know positively, but think we did receive some of the blank forms.

Q. Did you execute the form in 1928?

A. We did not.

Q. Why didn't you execute the form in 1928?

A. Well, it was not customary for us to execute these forms.

Q. You know Mr. Beach personally?

A. I do.

Q. Were you present when he testified in this case in July, 1930?

A. I was.

Q. Did you at that time inform counsel for the defendants that Mr. Beach was in error?

A. I don't remember positively about that.

Q. Did you file any written protest against this assessment in August, 1928, at the meeting of Board of Supervisors?

A. We did not.

Q. Why was no such protest filed?

A. Well, I don't know, we didn't file any protest.

Q. Did you know at that time how the lands had been assessed?

A. Yes, sir, we knew. We knew partly, at that time how they had been assessed.

Q. What do you mean by partly?

A. As I recall the land was assessed at one time and the timber assessed, equalized a while later; I understand special assessment.

[fol. 68] Q. Some other arrangements?

A. The record will show.

Q. Did you know the land assessment rolls containing these assessments were on file with the Board of Supervisors in 1928?

A. At August meeting?

Q. Yes?

A. No, sir, I didn't know; don't think it was.

Q. When did you first examine that roll?

A. Probably in July or August.

Q. 1928?

A. Yes, sir.

Q. What was your purpose of making examination?

A. I examined the tax rolls quite frequently when passing through counties where the company owns property.

Q. To see whether or not the assessments are satisfactory?

A. For information I usually check up various other matters, deeds and various things of that kind.

Q. Is it your general custom to check up on assessments each time a new assessment is made?

A. Most every time, yes, sir.

Q. Do you occupy an official position with the Green River Lumber Co.?

A. I do, Assistant Secretary and Treasurer.

Q. What is the connection of the Green River Lumber Co. with the defendants?

A. The only connection is that the Green River Lumber Co. has the principal part of the stock, that is the principal part of the stock in Green River Lumber Company is owned by A. B. Nickey & Sons.

Q. The Green River Lumber Co. is a corporation?

A. Yes, sir.

Q. A Lumber manufacturing corporation?

A. Yes, sir.

Q. Does it manufacture into lumber the timber from the lands of these defendants and has it not done that for years?

[fol. 69] A. Not entirely so; in a large measure that is the case.

Q. It also manufactures lumber from other timber than from the timber of these defendants?

A. It does.

Mr. Dulaney: That is all.

By Mr. Gore:

Q. Mr. Landgrebe can you recall offhand the many counties in Mississippi that Mr. S. M. Nickey, A. B. Nickey and Mrs. Nickey own property?

A. Four counties.

Q. You keep the records for the Green River Lumber Co.?

A. Yes, sir.

Q. You also keep up with the tax matters for the Nickeys, you are the clerical man I judge?

A. Yes, sir.

By Mr. Gore: That is all.

The Defendants rest.

Mr. Dulaney: We rest.

Reporter's certificate to foregoing transcript omitted in printing.

[fol. 70] In Chancery Court of Tunica County

[Title omitted]

Motion to Revive—Filed July 17, 1930

George T. Mitchell, Attorney General of the State of Mississippi respectfully shows that since the filing of this suit the Honorable Rush H. Knox has resigned as Attorney General of the State of Mississippi and that the said George T. Mitchell is his successor and is the duly commissioned, qualified and acting Attorney General of said State; wherefore, he moves that this cause be revived in his name as such Attorney General.

E. C. Sharpe, C. A. Jaquess, J. W. Dulaney, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 71] IN CHANCERY COURT OF TUNICA COUNTY

In Vacation

[Title omitted]

ORDER TAKING CAUSE UNDER ADVISEMENT

This day this cause came on for final hearing before the Chancellor in vacation at the Courthouse in Tunica, Mississippi on original bill of complaint, answer of the defendants and proof pursuant to a decree entered herein at the June, 1930 term of said Court.

On motion of George T. Mitchell, Attorney General of Mississippi from which it appears that he is the duly commissioned, qualified and acting Attorney General of the State and the successor of the said Rush H. Knox as such, and defendants consenting thereto, it is ordered that this cause be and the same is hereby revived in the name of the State of Mississippi on the relation of the said George T. Mitchell as such Attorney General.

And the Court having now heard the proof offered by the complainant and defendants and having heard the argument of counsel, by consent of all parties this cause is taken under advisement for the rendition of a final decree herein by the Chancellor in vacation with leave to the complainant to file a brief with the Chancellor on or before July 31st and leave to the defendants to file a brief in reply on or before August 10, 1930.

Thus ordered by the Chancellor at the Courthouse in Tunica, Mississippi, this the 15th day of July, 1930.

R. E. Jackson, Chancellor.

(Endorsed: E M B #8 P 435.)

[fol. 72] IN CHANCERY COURT OF TUNICA COUNTY

[Title omitted]

MOTION FOR LEAVE TO AMEND ANSWER—Filed Nov. 10, 1930

Come the defendants, and move the Court to permit them to amend their answer to the bill herein exhibited against

them and file herewith a copy of said amendment, and pray that the matter set up be in-corporated in said answer as paragraphs No. 22 to and including No. 26 thereof.

Gore & Gore, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 73] In Chancery Court of Tunica County

[Title omitted]

Order Allowing Amendment to Answer

This day came this cause for hearing on the motion of the defendants to amend their answer and it appearing to the Court that said motion should be sustained.

It is, therefore, ordered and decreed that said amendment be and it is hereby allowed, to which action of the Court the complainant excepted.

It is further ordered that the said cause be taken under advisement, for decision and entry of the decree in vacation.

Ordered and decreed this December 8, 1930.

R. E. Jackson, Chancellor.

(Endorsed: E M B 8 Page 447.)

[fol. 74] In Chancery Court of Tunica County

[Title omitted]

Minute Entry

By consent this cause is continued under advisement for the rendition of a final decree by the Chancellor in vacation.

Thus ordered, adjudged and decreed, this the 8th day of June, 1931.

R. E. Jackson, Chancellor.

(Endorsed: E M B #8 P 479.)

[fol. 75] In Chancery Court of Tunica County

State of Mississippi ex Rel. George T. Mitchell, Attorney General,

vs.

A. B. Nickey & Sons

Decree—Filed Jan. 11, 1932

This cause came on to be heard in vacation on the 15th day of July, 1930, pursuant to a decree entered at the June Term 1930 of this court, on original bill of the State of Mississippi ex rel. George T. Mitchell, Attorney General, against S. M. Nickey, W. E. Nickey, and Mrs. Orpha L. Nickey, non-residents of the state of Mississippi, operating and doing business under the firm name of A. B. Nickey & Sons, writ of attachment, proof of publication, answer and amended answer of said defendants, oral and documentary proof, and argument of counsel; and said cause having on said date been taken under advisement to be decided in vacation pursuant to a decree rendered on said date; and having been continued under advisement by order entered at each succeeding term of said court, including the December 1931 term thereof.

And it appearing to the satisfaction of the court that said defendants, as tenants in common, did, on the first day of February, 1928, own the following described lands in Tunica County, Mississippi, to wit:

The NE¼ and the NE¼ of the NW¼ and the S½ of the NW¼ and the S½ of Section 2, Township 4, Range 10, and a 3-acre strip in said Section; also all that part of Section 23, Township 4, Range 10 lying north of Coldwater River, and that part of the NW¼ of Section 24, Township 4, Range 10 lying north of Coldwater River, and the W½ of Section 12, Township 4, Range 10, and the W½ [fol. 76] of Section 13, and all of Section 14, Township 4, Range 10, as shown by the tax rolls of Tunica County, Mississippi; all of said lands lying and being within the Yazoo-Mississippi Delta Levee District, Brunswick Extension District, and also within the Lake Cormorant Drainage District of DeSoto and Tunica Counties.

And it further appearing to the satisfaction of the court that State, County, District, Yazoo-Mississippi Delta Levee

District, ad valorem and Brunswick Extension, Yazoo-Mississippi Delta Levee District acreage and Lake Cormorant Drainage District taxes were duly and legally levied by the proper taxing authorities for the year 1928, and that at the time of the filing of the original bill herein and the issuance of the writ of attachment by this court, none of the taxes so levied against any of said lands for said year had been paid and same were delinquent, and that all of the lands above described had been advertised for sale for taxes, as required by law, by the Sheriff and Tax Collector of Tunica County, Mississippi, and that at the time of the filing of the original bill and the issuance of injunction herein there were due taxes, costs, and damages on said lands as follows, to wit:

State Taxes	$646.81
General County taxes	950.00
Highway Road Bond Interest	60.64
Yazoo-Mississippi Delta Levee ad valorem and Brunswick Extension	477.83
Yazoo-Mississippi Delta Levee acreage	52.26
Beat No. 2 ad valorem and bond interest	768.10
Lake Cormorant Drainage District	3,835.80
Printers' fee	2.40
Clerks' fee	3.60
[fol. 77] Sheriff's fee	7.50
Damages	679.08
Making a total of taxes, costs, and damages due of	7,483.22

as shown by Exhibit "A" to bill of complaint filed herein and supported by the evidence introduced at the trial hereof.

And it further appearing to the satisfaction of the court that pursuant to an order of this court defendants were permitted, in order to have the attachment writ herein issued dismissed, to execute a bond conditioned to pay to the State of Mississippi the sum of $15,000.00, unless the defendants herein shall satisfy any decree which may be rendered in this cause against said defendants, said bond having been executed by said defendants with the United States Fidelity & Guaranty Company as surety thereon.

And it appearing to the satisfaction of the court that the

allegations of the original bill herein are supported by the proof, and that complainants are entitled to the relief prayed for.

It is therefore, ordered, adjudged and decreed that the complainants do have and recover of the said defendants and the surety on the bond filed herein jointly and severally the sum of $7,483.22 for the use and benefit of the State of Mississippi, the County of Tunica, and the various subdivisions thereof, as shown by the tax roll on file, and also for the use and benefit of the Yazoo-Mississippi Delta Levee District, Brunswick Extension, and Lake Cormorant Drainage District, the sums above set out.

And it further appearing to the satisfaction of the court that the said lands above described had been duly advertised for sale for taxes due thereon by the Sheriff of said County prior to the filing of the original bill in this cause, [fol. 78] and that the costs and damages had accrued thereon as above set out, and said complainant is entitled to recover for the use and benefit of the parties in interest:

It is, therefore, ordered, adjudged and decreed that complainant do have and recover of said S. M. Nickey, W. E. Nickey, and Mrs. Orpha L. Nickey, defendants herein, jointly and severally, and the United States Fidelity & Guaranty Company, surety on the bond filed herein, the sum of $7,483.22, with interest from this date at six per cent per annum to be distributed as follows:

$646.81 for the use and benefit of the State of Mississippi; $950.00 for the use and benefit of the General County Fund of Tunica County, Mississippi; $60.64 for the use and benefit of the Highway Road Bond interest Fund of said County; $477.83 for the use and benefit of the Yazoo-Mississippi Delta Levee District, ad valorem and Brunswick Extension fund; $52.56 for the use and benefit of the Yazoo-Mississippi Delta-Levee District acreage fund; $768.10 for the use and benefit of Beat No. 2 ad valorem and bond interest fund of Tunica County, Mississippi; $3,835.00 for the use and benefit of the Lake Cormorant Drainage District fund; $2.40 for printers' fees as above set out; $3.60 for Clerks' fees as above set out; $7.50 for Sheriff's fees as above set out; $679.08 for damages as provided by law for failure to pay said taxes at the time and in the manner required by law; all of said sums with said interest thereon

to be paid to complainant herein, to be distributed as required by law.

It is further ordered, adjudged and decreed that the defendants herein and the surety on the bond above mentioned, jointly and severally, be and they are hereby taxed with all costs, taxes, damages and fees, for which execution may issue as at law.

[fol. 79] Ordered, adjudged and decreed in vacation, this 9 day of January, 1932.

R. E. Jackson, Chancellor.

This decree has been examined by us on this, January 5, 1932.

W. E. Gore, T. N. Gore, Solrs. for Defts.

[File endorsement omitted.]

[fol. 80] Summons, in usual form, showing service on Ellis Woolfolk, Jr., filed Feb. 24, 1932, omitted in printing.

[fol. 81] John W. Dulaney. James W. Bell, Jr.

Dulaney & Bell, Attorneys-at-law, Tunica, Mississippi

February 26, 1932.

Mr. L. C. Shannon, Chancery Clerk of Tunica County, Mississippi, City.

DEAR SIR:

In re State ex Rel. Attorney General vs. A. B. Nickey & Sons

We hereby waive service of citation on the complainant in the above styled cause.

Yours very truly, for the Attorney General, Dulaney & Bell, by J. W. Bell, Jr.

JWB/VCN.

Filed Feby. 27th, 1932. L. O. Shannon, Clerk.

[fol. 82] IN SUPREME COURT OF MISSISSIPPI, MARCH TERM, 1932

A. B. NICKEY & SONS

v.

GEORGE T. MITCHELL, Attorney General

STIPULATION OF REVIVOR, ETC.

It is hereby agreed by and between appellants and appellee that this cause having been instituted in the name of Rush H. Knox and having been revived in the name of George T. Mitchell, Attorney General, during his incumbency as Attorney General of the State of Mississippi, and that the term of office of George T. Mitchell having expired and Greek L. Rice having been duly elected to the office of Attorney General, and being now the duly qualified and acting Attorney General, that said cause shall be revived in the name of Greek L. Rice, Attorney General, and proceeded with in said cause instead of that of George T. Mitchell, as same appears of record.

It is further agreed that the bond attached to this agreement may be substituted for the bond sent up with the record of this cause from the chancery court of Tunica County, Mississippi, and be taken in lieu thereof, and shall be considered and have the same force and effect as if filed and approved at the time of the original bond herein.

It is further agreed that the exhibits attached to this agreement, being a copy of the assessment roll of Tunica County referred to in the record and bill filed herein, may be incorporated in the record in the Supreme Court and become a part thereof as fully as if embodied in the record sent from the chancery court of Tunica County, Mississippi to the Supreme Court of the State and certified to by the clerk of the chancery court, and may be considered by the [fol. 83] appellate court or courts in the determination of this cause of action.

Witness our signatures this the 11th day of April, 1932.

(Signed) W. E. Gore, Solicitor, Counsel for Appellants. (Signed) E. C. Sharp, Atty. for Appellee.

[fol. 84] Know all Men by these Presents:

That we, S. M. Nickey, W. E. Nickey and Mrs. Orpha L. Nickey, original defendants and principal obligors in the attachment bond filed in the cause hereinafter described, United States Fidelity & Guaranty Company, of Baltimore, Md., surety on said bond, principals, and W. E. Gore, T. N. Gore and Charlie Sorrels, sureties, are held and firmly bound unto the state of Mississippi, in the penal sum of Fifteen Thousand Dollars, the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, this January 12, 1932.

The condition of the foregoing obligation is such that, whereas, in a case lately pending in the Chancery Court of Tunica County, Mississippi, wherein Geo. T. Mitchell, Attorney General, was complainant, and S. M. Nickey, W. E. Nickey and Mrs. Orpha L. Nickey were defendants and United States Fidelity & Guaranty Company, of Baltimore, Md., was surety on an attachment bond filed therein, a decree was rendered therein in favor of the complainant and said defendants and their said surety, all conceiving themselves aggrieved thereby, have prayed for and been granted an appeal to revise and reverse said decree, returnable to the next term of our Supreme Court.

Now, therefore, if the said obligors shall pay all costs of said appeal and shall satisfy such judgment as the Supreme Court of the State of Mississippi shall render therein, this obligation shall be void; otherwise, it shall remain in full force and effect.

(Signed) W. E. Nickey, (Signed) S. M. Nickey, (Signed) Mrs. Orpha L. Nickey, by W. E. Nickey, Attorney-in-fact. United States Fidelity & Guaranty Co. of Baltimore, Md., (Signed) by Wm. M. Hall, Attorney. (Signed) W. E. Gore, (Signed) T. N. Gore, (Signed) Charlie Sorrels.

[fol. 85] The foregoing bond filed and approved by me this 9 day of April, 1932.

(Signed) L. C. Sh-nnon, Chancery Clerk of Tunica County, Miss. (Seal.)

Filed April 9, 1932. L. C. Shannon, Clerk.

(Here follows side folio 86)

[fol. 86]

EXHIBIT TO STIPULATION

Land Assessments of Tunica County, State of Mississippi, for Years 1927 and 1928

Name of owner	Description of land or division of section		Grand Total valuation	School and Road District: Road Dist. No. 2 a		Levee	Timbered lands. All lands having timber must be listed in this space: No. of acres	Valuation excluding timber and improvements	No. of thousand feet, board measure of timber	Valuation of timber thereon	Uncultivatable lands: No. of acres	Valuation excluding building and improvements and timber	Number of acres of vacant land and vacant school land not taxable
A. B. Nickey & Sons	NE¼ & NE¼ of NW¼ & S½ of NW¼ & S½ & 3 @ strip.	Sec. 2, T. 4, R. 10.	6,264	6,264	603	6,264	80	640	240,000	1,440	523	4,184	603
A. B. Nickey	All Frac. North C. W. River.	Sec. 23, T. 4, R. 10.	28,597	28,597	606	28,597	606	4,969	3,938,006	23,628	...	.....	606
A. B. Nickey & Sons	NW¼ North of Coldwater River.	Sec 24, T. 4, R. 10.	5,958	5,958	122	5,958	122	1,000	793,000	4,958	...	.....	12
A. B. Nickey & Sons	W½	Sec. 12, T. 4, R. 10.	6,824	6,824	320	6,824	320	2,624	700,000	4,200	...	.....	320
A. B. Nickey & Sons	W½	Sec. 13, T. 4, R. 10.	9,232	9,232	321	9,232	321	2,632	1,100,000	6,600	...	.....	321
A. B. Nickey & Sons	All	Sec. 14, T. 4, R. 10.	23,976	23,976	641	23,976	641	5,256	3,120,000	18,720	...	.....	641

Exhibit—Filed April 16th, 1932. Tom Q. Ellis, Clerk.

[fol. 87] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 9, 1932

Come the appellants and assign for error on the part of the trial court, the following:

1. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged notice, as shown at pages 25 and 26 of the transcript.

2. The Court erred in decil-ing to sustain the objection of the defendants to the introduction of *of* the alleged notice by the board of supervisors as to the hearing of complaints and that values had been equalized, as shown at pages 27, 28 and 29 of the transcript.

3. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged board orders, as shown at page 37 of the transcript.

4. The Court erred in admitting in evidence, over the objection of the defendants, the sheets filed herein, by agreement, as a supplement to the record, for the reason that the sheets show the assessment to have been made for years other than 1928, as shown at page 30 of the transcript.

[fol. 88] 5. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged order of the state tax commission, as shown at pages 41 to 44 of the transcript.

6. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged board order, as shown at pages 45 to 50 of the transcript.

7. The Court erred in declining to sustain the objection of the defendants to the introduction of the *the* alleged order relative to the levy of taxes for the account of Lake Cormorant Drainage District, as shown at pages 51 to 53 of the transcript.

8. The Court erred in declining to sustain the objection of the defendants to the statement of counsel as to the roll, as shown at page 55 of the transcript.

9. The Court erred in declining to sustain the objection of the defendants to the introduction of *of* the alleged

order of the state tax commission, as shown at pages 55 and 56 of the transcript.

10. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged assessment roll, as shown at pages 58, 59, 60, 127, 128 to 148 of the transcript.

11. The Court erred in declining to sustain the objection of the defendants to the introduction of the decrees of the chancery court of De Soto County, as shown at pages 62 to 74 of the transcript.

12. The Court erred in declining to sustain the objection of the defendants to the introduction of the decrees relative to the issuance of bonds of the drainage district, as shown at pages 75 to 112 of the transcript.

[fol. 89] 13. The Court erred in declining to sustain the objection of the defendants to the introduction of the testimony of the tax assessor, Veach, as shown at pages 119 and 120 of the transcript.

14. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged order of the levee board, as shown at page 125 of the transcript.

15. The Court erred in declining to sustain the objection of the defendants to the introduction of the alleged order of the board of supervisors, as shown at pages 37 to 39 of the transcript.

16. The Court erred in holding that the taxes were ever lawfully assessed or levied, either as against the land, itself, or against these defendants, personally, or that the amount thereof was ever established, or that the value of the land was ever established.

17. The Court erred in rendering and entering each and every part of the decree against the defendants and the surety on their bond.

Wherefore, the defendants, the appellants here, say that this cause should be reversed and the bill should be dismissed.

Respectfully submitted.

(Signed) W. E. Gore, (Signed) T. N. Gore, Counsel for Appellants.

I hereby certify that I have this day mailed to Mr. E. C. Sharp, one of counsel for the appelle-, at his post office address, in the city of Jackson, Mississippi, a true copy of this assignment of errors.

Witness my signature this May 6, 1932.

(Signed) W. E. Gore, of Counsel for the Appellants.

[File endorsement omitted.]

[fol. 90] IN SUPREME COURT OF MISSISSIPPI, DIVISION "B"

[Title omitted]

ORDER REMANDING CASE TO DIVISION "A"—September 26, 1932

Ordered this case remanded to the Docket before Division "A", at its first sitting in November, 1932.

[fol. 91] IN SUPREME COURT OF MISSISSIPPI

In Banc

No. 30067

S. M. NICKEY et al.

vs.

THE STATE OF MISSISSIPPI

OPINION—Filed Jan. 30, 1933

ANDERSON, J.:

The state, on the relation of the Attorney General, filed its bill in the Chancery Court of Tunica County against appellants, to recover of them the sum of $7,483.22, the aggregate of the taxes and drainage district assessments due by appellants to the state, the county of Tunica, and the latter's taxing districts, the Yazoo-Mississippi Levee District, and the Brunswick Extension, and the Lake Cormorant Drainage District, and the fees and damages in-

curred, as a result of the advertisement by the tax collector of the county of appellants' lands for sale for their payment. Appellants are non-residents of the state. The Chancery Court acquired jurisdiction by virtue of a foreign attachment which was levied on lands belonging to appellants in Tunica County. Appellants appeared and answered the bill. There was a trial on bill, answer and documentary and oral proofs, resulting in a decree in favor of the state, as prayed for. From that decree appellants prosecuted this appeal.

The taxes and assessments involved are for the year 1928. The state alleged in its bill that appellants owned certain lands in Tunica county, describing them; that these lands were duly and legally assessed for taxes for the year 1928; that the taxes, damages and costs due for 1928 were as follows: State taxes $646.81; general county taxes $950.00; highway road bond interest $66.64; Yazoo-Mississippi Levee ad valorem, and Brunswick Extension $477.83; Yazoo-Mississippi Delta acreage $52,26; Beat No. 2 ad valorem and bond interest $768.10; Lake Cormorant Drainage District $3,835.00; printer's fee $2.40; clerk's fee $2.60; sheriff's [fol. 92] fee $7.50; damages $679.08; total $7,483.22. That the lands on which the taxes were due were within the Yazoo-Mississippi Levee District and Brunswick Extension, and also the Lake Cormorant Drainage District; that none of the taxes against the lands for 1928 had been paid; that the lands against which these taxes were assessed were chiefly valuable because of their growing timber; that exclusive of the timber, they were not of sufficient value to pay said taxes; that at the time of the filing of the bill, which was on the 23rd day of July, 1929, appellants were engaged in removing the timber from the lands, which, if continued, would strip them of their value to the extent that they would be insufficient to pay said taxes, and for that reason would be knocked off to the state when sold for taxes. That in addition to the lands against which said taxes were a charge, appellant owned other lands in Tunica county, which were described in the bill.

The bill prayed that all the taxes involved be declared a debt against appellants, and decree be rendered therefor, and that all the lands described in the bill be attached to satisfy such decree. Attachment was issued, as prayed for in the bill, and levied on all the lands described therein.

Thereupon appellants gave a bond, as provided by statute, in the sum of $15,000.00, discharging the attachment. The case presents the following questions for decision:

1. Whether the lands were legally assessed for their ad valorem taxes.

2. Whether section 3122, Code of 1930, declaring every lawful tax a debt, for which action may be brought, violates the due process provisions of the state and federal constitutions.

3. Whether drainage district taxes come within the provisions of that statute.

[fol. 93] 4. Even though drainage district taxes do not come within the provisions of that statute, whether or not, under the allegations of the bill, the state had the right to subject other property of appellants to the payment of such taxes than the property against which they are assessed.

5. Whether the state has the right to recover the statutory fees, costs and damages chargeable against lands delinquent for their taxes, where they have been advertised for sale by the tax collector, but not sold.

6. Conceding that the statute includes the taxes involved, whether or not the state had the right to bring this suit before the tax collector of the county had exhausted the statutory remedies provided for the collection of such taxes.

We will consider these questions in the order stated. There is little, if any, conflict in the material evidence. The tax collector of the county, whose duty it was to collect these taxes, had advertised appellants' lands, against which they were made a charge, for sale for their payment on the first Monday in April, 1929. Shortly before the day of sale the tax collector of the county came to the conclusion that the lands would not bring a sufficient amount to pay the taxes. His representative and the attorney general conferred in reference to the matter, and decided for that reason, that the tax collector should not sell the lands for their taxes; but that the attorney general should bring this suit to recover them. Accordingly the suit was brought, the advertisement by the tax collector for sale was discontinued; and the lands, therefore, were not sold by him.

There seems to be no difficulty in determining the question whether the lands were legally assessed. The members of the Court are unanimous in reaching the conclusion that they were. The grounds urged against the validity of the assessments are not new; they have been passed [fol. 94] upon by decisions of this Court; therefore, we see no good purpose to be accomplished in another discussion of them.

Section 3122, Code of 1930, provides that every lawful tax assessed, levied or imposed by the state, or by any county, municipality or levee board, whether ad valorem, privilege, exercise, income or inheritance, shall be a debt due by the person or corporation owning the property, or carrying on the business or profession on *on* which the tax is imposed, whether properly assessed or not; and may be recovered by action, "and in all actions for the recovery of ad valorem taxes the assessment roll shall only be prima facie correct."

This statute, except some recent additions which have no bearing on the questions involved in this case, has appeared in all of our codes, including, and since, the Code of 1892. Appellants contend that the statute denies due process, because it fixes the tax as a debt, without giving the taxpayer a hearing on the debt issue. It is true, we have no statute providing for personal service of process upon the taxpayer, giving him notice and an opportunity to be heard at the meeting of the board of supervisors fixing the value of his property as the basis for taxation. But as held in George Co. Bridge Co. v. Catlett, 161 Miss. 120, 135 So. 217, the taxpayer is given his day in court on that issue by the last clause of section 3122, which provides that in an action to recover ad valorem taxes, the assessment roll shall only be prima facie correct.

In that case the Court used this language: "If the law made the assessment roll conclusive as to the amount of taxes due by the taxpayer, the appellant's position would raise a very grave question, but that is not true. The assessment roll is only prima facie correct. That means, of course, that the question of correctness is rebuttable. Therefore, when an action is brought for taxes under this statute the taxpayer is, of course, summoned into court by [fol. 95] process personally served, and there given an opportunity to be fully heard; and on the trial he will be

permitted to rebut, if he can, the prima facie correctness of the assessment roll." Citing McMillen v. Anderson, 95 U. S. 37, 24 L. Ed. 335.

In Wells Fargo & Co. v. Nev., 248 U. S. 165, 63 L. Ed. 190, the Supreme Court held that it was no longer an open question that if a person against whose property a tax assessment has been made shall at any time in the course of the proceedings, before conclusive judgment be rendered, be given an opportunity to contest its correctness, he is afforded due process of law; that there is no denial of due process "in a tax assessment because the valuation was made without notice to the taxpayer, or without an opportunity to be heard, where the mode of enforcing the tax is by a judicial proceeding wherein process issues, and an opportunity is afforded for a full hearing, and only after there is a judgment sustaining the tax is payment enforced."

Notwithstanding this statute had been before this Court in several cases, its constitutionality seems not to have been challenged until the George Co. Bridge Co. case came up. See R. R. Co. v. Adams, 78 Miss. 895, 29 So. 996; Powell v. McKee, 81 Miss. 229, 32 So. 919; Delta Pine Land Co. v. Adams, 93 Miss. 340, 48 So. 190; Carrier & Co. v. Quitman Co., 156 Miss. 396, 125 So. 416; Enochs v. State, 128 Miss. 361, 91 So. 20.

The assessed value is the basis of the debt declared by the statute. It is the valuation fixed by the taxing authorities, upon which the tax levy is to be made. Before that valuation can be conclusively fixed, and become the basis of a debt for which an action may be brought, the taxpayer must have his day in court on personal service of process. The last clause of this statute furnishes such a hearing in providing that the assessment roll shall only be prima facie correct. If it is only prima facie correct, that means, of course, the taxpayer is given an opportunity to show the [fol. 96] correct valuation; and in attempting to do so, the same considerations are taken into account as would have been by the board of supervisors at its equalization meeting where the taxpayer had challenged the assessment. The fact that appellants are non-residents has no bearing on the question, because they appeared and answered the bill. They were before the court, and stood exactly like

they would, had they been residents of the state, and had been personally served with summons.

It is true that in the Delta Pine Land Company case, and in the George Co. Bridge Co. case, the taxpayers had, before suit was brought, appeared before the board of supervisors and contested their assessments. We are unable, however, to see how that, on principle, differentiates this case from those cases. In other words, in those cases the taxpayers had two hearings on the issue of the valuation of their property, and in the case at bar the taxpayer had only one hearing. Due process requires only one hearing—not two.

Section 3122 of the Code does not cover drainage district taxes; it only covers state, county, municipal and levee board taxes, "whether ad valorem, privilege, excise, income or inheritance." The state contends, however, that because of the following facts it had the right to fix the drainage taxes as a charge on the other lands owned by appellants, which were attached. Those facts were that appellants were denuding their lands in the drainage district of their timber, which constituted their principal value; that they would continue to do so until there would be nothing left except the land, which would be insufficient in value to pay the other taxes and the drainage assessment against them for 1928; that when the timber was removed appellants would permit the lands to sell to the state for state and county taxes, and there would be nothing left to pay the drainage assessments; that under the law the drain-[fol. 97] age assessments were a lien, not only against the land, but the timber standing thereon. The state's contention is that under the law the fact that appellants were destroying the timber which was part of the security for the payment of the assessments, gave it the right to resort to other property owned by appellants for the payment of the assessments, although such assessments are not debts for which a personal judgment may be recovered.

Under our drainage district statutes the assessments are a charge alone on the lands against which they are assessed. They do not constitute a debt against the landowner, and cannot be enforced as such. No other property of the landowner can be subjected to their payment. The question is whether the timber, when it is removed, is entirely freed from the assessment, regardless of what the purpose of the landowner is in removing it.

This exact question was not decided in Matthews v. Drainage District, 128 Miss. 647, 130 So. 910; but the principles there laid down, carried to their logical conclusion, can mean nothing else, except that the landowner has the absolute right to remove the timber from his lands in a drainage district, regardless of what his purpose is. The Court used this language in that case: "We hold that it was not within the legislative purpose, and therefore is not within these drainage acts, to prevent the removal of the timber at any time, and for any purpose desired by the owner; and this, too, without any payment of the installments of assessments to become due on the lands subsequently to the removal."

It would not be practical for the courts to inquire into the question as to what the purpose of the landowner was in removing the timber. As long as the timber stands, the assessments against the land are a lien on the timber, as well as on the land; but when the timber is removed it is freed from the lien, and, as stated, there can be no inquiry into whether such removal was rightful or wrongful, wise [fol. 98] or unwise. It is an absolute right. The purchasers of the bonds of these drainage districts are given notice by the drainage statutes that the dominating purpose in forming these districts is to remove a very large part, if not all, of the timber on the lands, in order to devote the lands to agricultural purposes and promote the public health. We conclude, therefore, that the state had no right to charge any other property owned by appellants outside of his lands in the drainage district, with the payment of the drainage assessments, upon the ground that a part of their security had been destroyed by appellants in the removal of the timber from the lands against which they were assessed.

Appellants gave a bond to discharge the attachment in the sum of $15,000.00. The condition of the bond is that appellants satisfy any decree which the Court might render against them. There is no merit in the contention that appellants are liable on this bond for any drainage assessments the court might find to be due by them, regardless of whether such assessments were chargeable against other lands than the lands against which they are assessed. The condition of the bond must be construed in the light of the decree sought by the state with reference to the drainage

assessments. There was no question that the drainage assessments were valid liens on the lands against which they were assessed. It was sought to charge them as liens on other lands. Under the views we have expressed, this cannot be done. Therefore, there is no liability on the bond, so far as the drainage assessments are concerned.

Appellants contend that there could be no resort to section 3122 until the tax collector had exhausted the statutory scheme of collecting. We think Delta Pine Land Co. v. Adams, 93 Miss. 340, 48 So. 190, is a complete answer to that contention. In that case the tax collector had not exhausted the statutory remedy for the collection of the taxes. It was a back assessment and suit by the state [fol. 99] revenue agent to recover the taxes. The Court held that the statute declaring taxes a debt for which suit might be brought created an additional and more effective remedy by which the nature of the tax obligation was changed to that of a debt, and applied as well to back taxes as to current taxes; that the statutory method of collecting back taxes was not exclusive—that the statute creates a new obligation to pay the taxes, as well as a new remedy for their collection, and that the word "action" in the statute does not confine the remedy to courts of law. In discussing the question whether the statutory methods for the collection of taxes had to be exhausted before action could be brought under this statute, the Court used this language:

"Nor is there anything in the proposition that the remedy provided by section 4740 should be exhausted before resort is had to the remedy provided for by section 4256. Three authorities are cited in support of this proposition, but they all apply only in the absence of statutes like section 4256. We are therefore clearly of the opinion, first, that the remedy provided by section 4740 is not exclusive of the remedy provided by section 4256, where back taxes are involved; but that either may be pursued without reference to the other; the remedy provided by section 4256 being merely cumulative and additional to that provided in section 4740".

As we view it, in order to hold that the state had no right to bring this suit, much of what was decided in that case would have to be overruled. We have not a case here

where the state has interfered with the collection of these taxes by the tax collector through the statutory scheme. It was agreed in the record that the tax collector abandoned the statutory scheme, and agreed for the state to bring this suit. The suit is the result of cooperation between the attorney general and the tax collector. It was thought by them that the taxes might be collected by this suit, but probably could not be by the tax collector. This is not a [fol. 100] case where the state has pushed the tax collector out of its way, and taken charge of the situation. It is, therefore, unnecessary to decide in this case how far the state can go in interfering with the tax collectors in the performance of their statutory duty in the collection of taxes. If the state must wait until the tax collectors have exhausted the statutory remedies for the collection of taxes, section 3122, declaring taxes a debt for which suit may be brought, would be utterly useless. To illustrate, the tax collector pursued the statutory scheme; the lands of the taxpayers are knocked off to the state for their taxes, costs and damages. The result is that the taxes are paid, and the taxpayer owes no taxes for which suit may be brought.

The chancellor, in his decree, awarded the state the costs of advertising the lands by the tax collector, and the tax collector's statutory damages for collecting delinquent taxes. We are unable to see how the state was entitled to recover these costs and damages. It is true, the lands had been advertised by the tax collectors, but they were not sold. The statutory scheme for the collection of the taxes through the tax collector was abandoned. He did not earn his commissions and costs. For those reasons it appears to us that these costs and damages were not recoverable by the state.

The result of these views is that the decree appealed from is affirmed as to all the taxes except the drainage assessments, and that part of the decree awarding the state the tax collector's costs and damages.

Reversed in part and affirmed in part.

[File endorsement omitted.]

[fol. 101] IN SUPREME COURT OF MISSISSIPPI

In Banc

Number 30067

S. M. NICKEY et al.

vs.

STATE ex Rel Attorney General

DISSENTING OPINION—Filed Jan. 30, 1933

ETHRIDGE, J.:

I am unable to agree with the majority opinion in regard to a personal liability being created by a tax assessment, and the rights of the Attorney General, on the present record, to bring suit for the ad valorem taxes due State, County and Levee Districts, etc. I think the assessment was a valid charge against the property attached, and the bond to discharge such judgments as the court might render, would be all right, if limited to subjecting the property seized to the tax assessed thereon, provided the Attorney General had authority to bring the suit.

The Attorney General's bill was against the appellants as partners, doing business under the name of "A. B. Nickey & Sons".

The defendant's answer denied the partnership, and denied knowledge or notice of any proceeding or assessment of taxes. They also set up therein that A. B. Nickey was dead at the time the alleged tax assessment was made.

There could be no judgment created by an assessment against a partnership, and the alleged assessment against "A. B. Nickey and Sons" would clearly be void as to A. B. Nickey, as he was dead.

It is a settled rule in this state that partners cannot be sued, or sue, in their partnership name, and that it is necessary in a suit by partners that the names of the individual members be alleged. Lewis v. Cline, 5 So. 112, not officially reported, and Blackwell v. Reid, 41 Miss. 102.

[fol. 102] I am of the opinion that the right to sue for taxes cannot be based on Section 3122, Code 1930, until the statutory time for collection of taxes by the Sheriff has expired, which is on the first Monday of April in each year,

and that no action by suit can be brought until after that time.

By statute, taxes constitute a lien upon all property subject to taxation, whether assessed to the true owner or not, from January 1st of each year. Therefore, the assessment of property on the assessment roll, as in the case before us, constitutes a valid assessment against the property itself, but does not constitute a valid assessment against the owners as an individual liability. In order to constitute an assessment against a person, it must be assessed to him, or them, if more than one.

A consideration of the different provisions of the revenue chapter (Chap. 61, Code 1930), will show that it was within the contemplation of the Legislature that the statutory proceedings as to the assessment of taxes and the collection thereof be followed up to the time when these authorities were given to completely act, and unless they failed to act, no suit by any officer could take the place of the tax collector in the collection of taxes.

Under Sec. 3145, Code 1930, and said section as contained in prior codes, the tax assessor is required to assess all lands in his county, and to see that none of the lands escape taxation, and that all are placed on the assessment roll so as to account for every particle of land in the county.

Section 3147 makes it the duty of the supervisors to furnish the assessor with necessary maps and plats of the county, showing all lands of the county, including the municipalities.

Section 3148 provides how the land roll shall be made up, and that when the owners are not known, the land shall be assessed to "unknown".

[fol. 103] Section 3151 provides for the description and designation of lands.

Section 3161 requires the assessor to file the rolls of assessment with the Clerk of the Board of Supervisors on or before the first Monday in July of each year, with an affidavit appended thereto that he has endeavored to ascertain and assess all the persons and property in his county; has required every tax payer to make oath as to his property, and showing the name of every person who has refused to make oath. It also provides that if the assessor fails to file his roll on or before the first Monday in July in each year, the Board of Supervisors, at its July meeting,

shall adopt an order showing such failure, and showing to the state tax Commission that the assessor has so failed, and the tax commission shall order when such roll shall be completed, and the time when such objections as may be made thereto may be heard by the Board of Supervisors.

Section 3162 provides for the equalization of such rolls by the Board of Supervisors, and shall complete same at least ten days before the August meeting, and advertise that same are ready for inspection and examination.

Section 3163 requires the assessor to attend the July meeting, and all subsequent meetings of the Board of Supervisors.

Section 3164 provides what shall be done in equalizing taxes.

Section 3165 provides how persons may object to the assessment roll.

Section 3166 provides that objections must be filed, or the assessment will stand, and that such objections must be filed at the August meeting of the Board of Supervisors, in writing.

Section 3178 makes it the duty of the Board of Supervisors to carry out the instructions from the state tax commission, and provides for a revision of its instructions.

[fol. 104] Section 3179 provides that an aggrieved tax payer may appeal to the circuit court in the manner provided by law within ten days after the adjournment of the Board of Supervisors' meeting at which the approval of the roll by the state tax commission is entered.

Section 3180 provides for the procedure of the appeal and its effect.

Section 3191 provides for changes in the assessment roll.

Section 3227 provides for the levy of taxes by the counties and taxing districts.

Section 3229 directs the tax collector to proceed to the collection of taxes, adding the county tax to the state tax, and collecting all together.

Section 3238 provides that all taxes remaining unpaid after the first day of February shall be collected by distress and sale of any personal property liable therefor, at the courthouse door unless such property be too cumbersome, after five days notice of the time and place of sale.

Section 3249 provides that the collector shall sell said land for delinquent taxes on the first Monday of April,

first offering 40 acres, and if this does not bring the amount due, then he shall offer another similar subdivision, and so on until the requisite amount be produced, or until all the land constituting one tract and assessed as the property of the same owner be offered. It also provides that if no person will bid for it the whole amount of taxes and costs, the collector shall strike the land off to the state, and that the sale shall be continued from day to day, and that any person sustaining damage by reason of failure or error of the tax collector may recover damages therefor on his official bond.

These various sections are to be construed in connection with Section 3122 giving a right to act, which section, in my [fol. 105] opinion, clearly contemplated that such right of action shall be postponed until the taxing authorities have had time to pursue the statutory scheme and collect the taxes due.

In Robertson v. Shelton, 127 Miss. 360, 90 So. 83, it was held that the Revenue Agent could not recover taxes by suit where he had taken no coercive proceeding, even after the first day of April, so long as the tax collector was still collecting taxes.

Under other decisions, when the revenue agent began a proceeding, he had the right to fees resulting from the collection of taxes, although the tax was actually collected and paid to another person than himself.

This case, Robertson v. Shelton, supra, while not directly in point, but by implication, is in accord with the view that so long as the tax collector is proceeding to collect the taxes, and so long as the period fixed by him to act, to-wit, the first Monday in April, has not expired, then no other proceeding shall be taken.

In the case of State v. Piazza, 66 Miss. 426, 6 So. 316, it was held that a statute creating a tax, and providing a special remedy for its collection, should have such remedy applied in the collection of the tax, and that this remedy is exclusive, and does not authorize suit to be brought for the tax. It was also held to be beyond the power of courts to supply by judicial construction what is omitted from the statutes. The court there said: "If the plain, simple and inexpensive statutory method of collecting taxes may be

disregarded, and the district attorney may become tax-collector at pleasure, by suit at law in one case, why may it not be done in all cases? And to what consequences would such new and dangerous principle incorporated into our system of taxation by judicial interpretation, lead? What is the limit of time within which such suits might be brought? To what statute of limitations would the state [fol. 106] be subject? How long would the citizen be left to the mercy of spies and informers, and exposed to the vexation and cost of legal proceedings in reference to a burden which is generally sufficiently onerous?"

In Adams, State Rev. Agt. v. Tonella, 70 Miss. 701, 14 So. 17, it was held that the constitutional scheme of assessing property was essential to create liability for taxes, and that the Legislature was without power to provide that the assessment should be made by another than the constitutional officer. The statute there involved gave the State Revenue Agent the power to assess taxes which had escaped taxation, and to collect all revenue improperly withheld from payment, and was, I think, as comprehensive as Section 3122, Code of 1930. It is therefore, clear to my mind that no right of action existed in the Attorney General, and that he had no authority to suspend the activities of the Sheriff in proceeding to sell, at the time fixed by law, the property, as was done in this case.

The majority opinion conveys the idea to my mind that the Attorney General acted, at the instance of the sheriff, in instituting a suit. I do not agree with this idea. What happened, according to what was dictated into the record, is as follows:

"By Mr. Dulaney (one of counsel representing the Attorney General): At the request of counsel for the defendants, I will state, as a part of the record, that a conference was held in Jackson, Miss., between Mr. Rush Knox, then Attorney General, E. C. Sharpe, Assistant Attorney General, and myself, in regard to the subject matter of this suit, sometime prior to the regular time for selling land for taxes in 1929, and at that conference it was agreed that on my return to Tunica, I would request the Tax Collector of Tunica County not to make sale of the lands described in the bill of complaint in this case for the recovery of taxes on which [fol. 107] bill is filed, and that, in accordance with that

request, no sale has been made by the Tax Collector of Tunica County, Mississippi of these lands. It is true they were advertised for sale on first Monday of April, 1929, this request was made perhaps a week or so before that date, for the taxes for which this suit is now being prosecuted."

It does not appear that Mr. Dulaney was a representative of the Tax Collector. He was, perhaps, a representative of the Board of Supervisors.

But, at all events, I think it is clear that the Attorney General was unauthorized to sue, even though the sheriff was stopped from proceeding with the tax collection. The Attorney General had no right to institute a suit where the condition was brought about by his participation and aid, which prevented the regular procedure, and, consequently is not entitled to prosecute the suit here involved, although he might have been authorized to bring suit had the sheriff, of his own accord, and without the influence of the Attorney General, failed to consummate the sale of the lands for taxes.

In my opinion, it is not permissible for the State, or any of its agents, without Legislative action, to defeat a tax payer of his right to let his lands be sold for taxes and knocked off to the state, with the right given by law to redeem should he so desire, within a two year period. And in the construction of Section 3122, this right should not be defeated. If the construction placed upon this section by the majority opinion is correct, it is my opinion that it will violate the equal protection clause of the Federal Constitution.

It appears from the record in this case that the other tax payers in Tunica County who did not pay their taxes had the benefit of Section 3249, and their property was sold to the state, subject to their right to redeem within two years. [fol. 108] In the case at bar, under the construction given, the appellants are denied this right. They have equal rights with the other taxpayers to let their land go in the regular procedure.

Under the construction given, it is within the power of the taxing authorities to select some tax payers and give them the benefit of this section, while denying it to other tax payers by instituting suit to collect the taxes rather than

allowing it to be sold in the regular order with the right to redeem in two years.

Under Section 3166, Code of 1930, and corresponding sections in prior codes, if no objection was made to the assessment roll, and no appeal taken therefrom, it became final, and the tax payer was bound thereby, and so was the state. It could not be changed except under limited conditions provided by Section 3191, Code of 1930. If the tax collector did not choose to resort to the distress method and sell the property, then both the state and the tax payer are not bound by the assessment made, because by the terms of Section 3122, the whole assessment may be opened up and either party may challenge its correctness. It is a little difficult to see how this can be done consistently in connection with the equal protection clause of the Constitution.

This suit was instituted in the chancery court, and it has often been held that the chancery court could not be made a tax assessing body. See Enochs v. State, 128 Miss. 361, 91 So. 20, and the authorities there cited.

Section 3122, Code of 1930, making taxes a debt against the owner of property, recoverable by suit, as applied to a non resident of the State is void in so far as it undertakes to impose a personal obligation as distinguished from an obligation imposed on the property for the tax. The cases of R. R. Company v. Adams, 78 Miss. 895, 29 So. 996; and George County Bridge Company v. Catlett, 161 Miss 120, 135 So. 217, and Delta Pine Land Co. v. Adams, 93 Miss. 340, 48 So. 190, in no manner refer to a non resident who had not appeared, and who had not been served with personal process within the State. In the cases of Delta Pine [fol. 109] Land Co. v. Adams, and George County Bridge Co. v. Catlett, supra, the appeals were prosecuted by the tax payers from the assessments and the assessments had been sustained and made final. All questions were presented, and the tax payers were in court prior to the assessment becoming final.

The case of Powell v. McKee, 81 Miss. 229, 32 So. 919, is not in point, because it was not a suit to recover a tax, but an injunction to restrain the collection of the tax by the taxing authorities. The remarks made in that case have no force as a decision, but are more illustrations used by the court.

In so far as these cases hold that the statute gives a right of action against a non resident who has not been served with process within the state, and who has not appeared and contested the assessment prior to its becoming final, they are not authority for the position announced in the majority opinion; which announcement is in conflict with the decisions of the Federal court, especially the case of Dewey v. Des Moines, 173 U. S. 193, 19 Sup. Ct. 379, 43 L. Ed. 665. The decision in that case applied to an assessment made for betterment of property, which the statute of Iowa declared to be a personal liability against the owner of the property, just as Section 3122, Code of 1930, undertakes to make the taxes there mentioned personal obligations. The court there said that:

"It is asserted in the petition that the defendant, Dillworth, the treasurer of Holt County, is attempting to enforce the assessment levied by the common council, and that he claims plaintiff in error is personally liable for the taxes and interest, and will enforce payment thereof unless restrained, and that plaintiff's personal property is liable to be illegally seized for the payment of the tax. * * * In this case no question arises with regard to the validity of a personal judgment like the one herein against a resident of the state of Iowa, and we, therefore, express no opinion [fol. 110] upon that subject. This plaintiff was at all times a nonresident of that state, and we think that a statute authorizing an assessment to be levied upon property for a local improvement, and imposing upon the lot owner, who is a nonresident of the state, a personal liability to pay such assessment, is a statute which the state has no power to enact, and which cannot, therefore, furnish any foundation for a personal claim against such nonresident. There is no course of reasoning as to the character of an assessment upon lots for a local improvement by which it can be shown that any jurisdiction to collect the assessment personally from a nonresident can exist. * * * A judgment without personal service against a nonresident is only good so far as it affects the property which is taken or brought under the control of the court or other tribunal in an ordinary action to enforce a personal liability, and no jurisdiction is thereby acquired over the person of a nonresident further than respects the property so taken. This is as true in the case of an assessment against nonresident of such a

nature as this one as in the case of a more formal judgment. The jurisdiction to tax exists only in regard to persons and property, or upon the business done within the state, and such jurisdiction cannot be enlarged by reason of a statute which assumes to make a nonresident personally liable to pay a tax of the nature of the one in question. All subjects over which the sovereign power of the state extends are objects of taxation. Cooley, Tax'n (1st Ed.) pp. 3 4; Burroughs Tax'n Sec. 6."

I can see no difference between a nonresident and a resident in the imposition of a personal liability for a betterment tax, and a personal liability for an ad valorem tax. The liability, to constitute a foundation for judicial action, must exist at the time the action is instituted, and cannot be created after the filing of a suit and during its progress.

The Supreme Court of the United States has elaborately and learnedly discussed the question of distinctions be- [fol. 111] tween creating a liability against a property situated within a state, and liability against nonresidents who have not been served with process in the state, and who have not appeared. There was no appearance before the taxing authorities, and no service of process within the state in the case at bar. Consequently, what was said in Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565, and Dewey v. Des Moines, supra, is applicable here. In the decision of Pennoyer v. Neff, at page 570, 24 L. Ed. the court said:

"Substituted service by publication, or in any other authorized form, may be sufficient to inform parties of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner in person, or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the state, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners; or when the public is a party to condemn and appropriate it for a public purpose. In other words, such service may

answer in all actions which are substantially proceedings in rem. But, where the entire object of the action is to determine the personal rights and obligations of the defendants, that is where the suit is merely in personam, constructive service in this form upon a nonresident is ineffectual for any purpose."

There are numerous cases referred to in this case, and they have been followed in many cases as will appear from the case notes in 5 L. Ed. and in Rose's Notes. I will not elaborate upon them.

It follows that I believe that the judgment in the case at bar should be reversed and the bill dismissed entirely.

[File endorsement omitted.]

[fol. 412] IN SUPREME COURT OF MISSISSIPPI

In Banc

No. 30067

S. M. NICKEY et al.

vs.

STATE ex Rel. Attorney General

DISSENTING OPINION—Filed Jan. 30, 1933

GRIFFITH, J.:

In my opinion, this case does not present a proper occasion for the intervention of the attorney general and that upon the facts he was without legitimate power to institute and prosecute this suit. And such being my view, it follows that in my opinion the other questions dealt with are not before the court. I think the decree here should reverse and dismiss.

[File endorsement omitted.]

[fol. 113] IN SUPREME COURT OF MISSISSIPPI, SEPTEMBER TERM, 1932

En Banc

No. 30067

S. M. NICKEY et al.,

vs.

STATE

DECREE—January 30, 1933

This cause having been submitted at a former day of this term on the record herein from the Chancery Court of Tunica County and this court having sufficiently examined and considered the same and being of the opinion that there is partial error therein doth order and adjudge and decree that the decree of said Chancery Court rendered in this cause on the 9th day of Januay 1932, be and the same is hereby reversed in part and affirmed in part. It is further ordered, adjudged and decreed that the decree of the Chancery Court, aforesaid, be and the same is hereby affirmed as to all the taxes except the drainage assessments, and that part of the decree awarding the state tax collector's costs and damages. It is further ordered and adjudged that the State of Mississippi do have and recover of and from the appellants, S. M. Nickey, W. E. Nickey, Mrs. Orpha Nickey, jointly and severally, the United States Fidelity and Guaranty Company, and Charlie Sorrels, W. E. Gore and T. N. Gore, sureties on the supersedeas appeal bond herein the sum of $1,571.94 with interest at the rate of 6 per centum from the date of the decree in the court below until paid, to be distributed as follows: $646.81 for the use and benefit of the State of Mississippi; $950.00 for the use and benefit of the General County Fund of Tunica County, Mississippi; $60.64 for the use and benefit of [fol. 114] the Highway Road Bond Interest fund of said County; $477.83 for the use and benefit of the Yazoo-Mississippi Delta Levee District, ad valorem and Brunswick Extension fund; $52.26 for the use and benefit of the Yazoo-Mississippi Delta Levee District acreage fund; $768.10 for the use and benefit of Beat Number 2 ad valorem and bond

interest fund of Tunica County, Mississippi; all of said sums with said interest thereon to be paid appellee herein, to be distributed as provided by law. It is further ordered and adjudged and decreed that the appellee do have and recover of and from appellants and Charlie Sorrels, W. E. Gore and T. N. Gore, aforesaid sureties, all of the costs of the court below; and that the appellants do have and recover of and from the appellees all of the costs of this appeal to be taxed, etc.

[fol. 115] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR—Filed Feb. 28, 1933

Come the appellants and respectfully suggest that the Court erred in rendering its judgment of January 30, 1933, in the above styled cause, in the following particulars:

1. The Court erred in holding that the Chancery Court had any constitutional authority to assess or collect taxes and that this court had any authority to enter any judgment against the appellants in respect thereto.

2. The Court erred in construing the statute to authorize the imposition of taxes against the land on which they are alleged to have been imposed, and in holding that the trial court or the appellate court had the power to adjudicate personal liability for the payment of the taxes.

3. The Court erred in denying the appellants due process of law, in giving judgment against them without the service of process or a constitutional substitute therefor, before the assessment was made by the Board of Supervisors and the State Tax Commission.

4. The Court erred in holding that the Chancery Court had jurisdiction of the parties sufficient to support a personal judgment for the taxes on the land on which they were not paid.

[fol. 116] 5. The Court erred in holding that the appellants submitted themselves to the jurisdiction of the courts of this state, when they appeared in the Chancery Court

for relief against the condemnation and sale of the land attached, on which the taxes had been paid.

6. The Court erred in holding the lien of the tax statute to cover anything but the land which was the immediate subject of the tax imposed.

7. The Court erred in holding that the ad valorem taxes can be recovered and collected, in the face of the statute which requires the collection of these taxes and the drainage charges at the same time, which, if it were enforced in this case, would require the payment of what this Court has held cannot be recovered, in order to discharge the personal liability, if there is one.

8. The Court erred in holding that the complainants could plead the assessment and the roll as final, and recover in the face of the solemn allegation that the land was not worth what the roll disclosed as its value, on the theory that the assessment was only prima facie correct and was subject to review by the Chancery Court, with the power to do what was not done at the time the assessment was made, that is, to assess the land and value it and to determine the question of personal liability of, and impose it upon, the appellants.

9. The Court erred in holding, as a matter of fact, that the suit was the result of cooperation between the attorney general and the tax collector. The suit was brought as a result of an unwarranted interference by the attorney general with the tax collector in the discharge of his mandatory duty to sell the land for the payment of the taxes.

[fol. 117] 10. The Court erred in holding that the attorney general had any right to bring this suit so long as the matter of tax collection was in the hands of the collector.

11. The Court erred in denying the appellants the equal protection of the laws, as provided in the Fourteenth Amendment to the Federal Constitution, which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws", in this, that it is the universal custom, as it is the mandatory duty of the tax collector, to sell the land of all delinquent taxpayers for taxes, upon default in their payment, and this course was pursued in Tunica County with reference to the sale

of the land of every other taxpayer in the county in the year 1928, which resulted in the payment of the debt created by the statute as to all other taxpayers. Said right to have their land so sold is a valuable right, as held by the courts of this state, and which right was denied these appellants in that they were singled out and discriminated against by the arbitrary conduct of the tax collecting authorities of said county, so that the laws of this state are one thing to one person and another to another, at the election of the tax collecting authorities, and have been administered in this case with an evil eye and an unequal hand between persons in similar circumstances, material to their rights, and constitute the denial of equal justice, within the prohibition of the Federal Constitution.

Wherefore the appellants suggest these errors and pray the Court that its judgment heretofore entered be vacated and set aside, that the decree of the Chancery Court be reversed, and that a final judgment be entered here, dismissing the bill.

Respectfully submitted.

(Signed) W. E. Gore, Counsel for Appellants.

[File endorsement omitted.]

[fol. 118] IN SUPREME COURT OF MISSISSIPPI

In Banc

Number 30067

S. M. NICKEY et al.

vs.

GREEK L. RICE, Attorney General

OPINION ON SUGGESTION OF ERROR—Filed March 20, 1933

SMITH, C. J.:

The decree of the court below was affirmed in part on a former day, and the appellants suggest that we erred in so doing.

All of the questions presented by the Suggestion of Error were decided adversely to the appellants in our former opinion, to which we adhere, and only two of them will be again specifically discussed. The appellants assert:

First. That the courts are without power to collect taxes through their judicial processes, and

Second. That a state is without power to impose a personal liability on nonresidents for taxes on property owned by them within the state.

The first of these assertions is too broadly stated, for, under all the authorities, taxes may be collected by judicial process, when, as here, so to do is authorized by the legislature. Section 3122, Code of 1930.

The second assertion presents a more difficult question and seems to be in accord with numerous State court decisions, note of Annotator to Greenbaum v. Commonwealth, Ann. Cas. 1913 D. p. 342, and to have the approval of Mr. Beale of the Harvard Law School, 32 Harvard Law Review, at page 587. The question, however, in the last analysis, is for the decision of the Supreme Court of the United States, and, according to that court, such liability can be imposed on a nonresident within the due process of law, [fol. 119] which requirements are met if, before a nonresident comes under an obligation to pay the tax, he is given appropriate notice and an opportunity to contest it. Dewey v. Des Moines, 173 U. S. 193, 43 L. Ed. 665; Bristol v. Washington County, 177 U. S. 133, 44 L. Ed. 701. This was expressly held in the latter case wherein the court said:

"Dewey v. Des Moines, 173 U. S. 193, 43 L. Ed. 665, 19 Sup. Ct. Rep. 379, cited by plaintiff in error, is not to the contrary. What was ruled there was that a citizen of one state cannot be cast in a personal judgment in another state on an assessment levied there on real estate for a local improvement, without service on him, or voluntary appearance, or some action on his part amounting to consent to the jurisdiction."

These cases were so interpreted in Parker v. Rising Sun Street Lighting Company, 229 Mass. 498, 118 N. E. 871, and Greenbaum v. Commonwealth, 147 Ky. 450, 144 S. W. 45, Ann. Cas. 1913 D, 338.

When the appellants appeared in the court below, they submitted themselves to the jurisdiction thereof, and, under the statute, had the right to contest the validity of the tax, including the assessed valuation of the property. This meets the requirements of due process. Bristol v. Washington County, supra.

Overruled.

[File endorsement omitted.]

[fol. 120] IN SUPREME COURT OF MISSISSIPPI

In Banc

No. 30067

S. M. NICKEY et al.

v.

GREEK L. RICE, Attorney General

DISSENTING OPINION ON SUGGESTION OF ERROR—Filed March 20, 1933

ETHRIDGE, J.:

I adhere to my dissent rendered heretofore, and reported in 145 So., at page 634, et seq. In this case the proceeding in the chancery court was for both an attachment of the property, and a personal judgment for the amount of taxes due thereon according to the assessment roll. The process was by publication to non-residents, but the living defendants in the bill appeared and filed an answer, challenging the assessment, and denying personal liability. The property had been seized by the attachment proceedings, and the defendants gave a bond to have the attachment released, by which they bound themselves to pay whatever taxes the court should find to be due.

The giving of this bond, of course, subjected them to a personal liability, as they secured the benefit of having the property released from attachment. However, I cannot acquiesce in the doctrine that the original assessment constituted a personal liability against the defendants, en-

forcible by suit. There was no personal service upon any of the defendants in the assessment proceedings. And while there was a demand enforcible in the courts against the property itself, there was no liability upon the owners of the property, who were non-residents, and had not been brought before the assessing board, nor had they appealed or otherwise appeared in the assessment proceedings.

[fol. 121] In my judgment, the case of Bristol v. Washington Co., 177 U. S. 133, 20 Sup. Ct. Rep. 585, 44 L. Ed. 701, does not sustain personal liability against a non-resident for taxes, and does not change the rule announced in Dewey v. Des Moines, 173 U. S. 193, 43 L. Ed. 665, 19 Sup. Ct. Rep. 379. In the Bristol case the property owner had localized his business, having a resident agent to transact business for him. After the death of the property owner administration proceedings were had to collect demands in favor of the estate, and to have liability against the estate adjudged, and the estate in Minnesota administered. The demand of Washington County for taxes was a liability against the property in Minnesota, and was taxable there. The administration in Minnesota had the same effect to give the court jurisdiction as though the deceased had been living, and had appeared and sought personally to transact business in court.

The case of Parker v. Rising Sun Lighting Co., 229 Mass. 498, 118 N. E. 871, cited in the majority opinion, is likewise a case where the defendant corporation had localized its business in Massachusetts, where its property was situated, and was there assessed. There is quite a difference between a citizen merely owning property in a foreign state, and being subject to a personal liability for taxes without service of personal process.

The case of Groenbaum, et al., v. Commonwealth of Ky., 147 Ky. 450, 144 S. W. 43, Ann. Cas. 1913 D, 338, is likewise distinguishable from Dewey v. Des Moines, supra. In its opinion in this case the Kentucky Court said, on page 341, Ann. Cas. *Cas.* 1919 D;

"The cases relied upon by appellant rest upon the governing fact that a non-resident is not to be liable personally where he had not appeared, in any way, in the initial proceedings taken to levy the assessment. Being a non-resident, and presumably ignorant of the steps taken by the foreign state, he has not had his day in court, and his lia-

[fol. 122] bility is therefore limited to his property there taxed; but where he takes part in the assessment, this presumption does not exist, and he stands in no better position than a resident."

In that case the Kentucky Court held that the defendant took part in the assessment of the property. In other words, that he was present during the assessment proceedings, and participated therein. The interpretation, however, placed by the Kentucky Court upon the case of Dewey v. Des Moines is contrary to the weight of authority, and, in my view, contrary to the holding in that case.

In a case note to Greenbaum v. Commonwealth, Ann. Cas. 1913 D, page 342, it is said:

"Most of the decisions on the question of the personal liability of a nonresident for taxes on resident property held contrary to the reported case and support the proposition that no action can be brought to enforce a personal liability for taxes against a nonresident. Dewey v. Des Moines, 173 U. S. 193, 19 S. Ct. 379, 43 U. S. (L. Ed.) 665; Rising v. Granger, 1 Mass. 47; Dewey v. Stratford, 42 N. H. 282; Cocheco Mfg. Co. v. Stafford, 51 N. H. 471 (dicta); Bowles v. Clough, 55 N. H. 389; Winchester v. Stockwell, 75 N. H. 322, 74 Atl. 249; New York, etc., R. Co. v. Lyon, 16 Barb. (N. Y.) 651; New York v. McLean, 57 App. Div. 601, 68 N. Y. S. 606, affirmed 170 N. Y. 374, 63 N. E. 380; New York v. Mason Au; etc., Confectionery Co., 64 Misc. 405, 119 N. Y. S. 472; Pendleton v. Com., 110 Va. 229, 65 S. E. 536; Berlin v. Grange, 5 U. C. C. P. 211. See, also, McLean v. Myers, 134 N. Y. 480, 32 N. E. 63; Cottle v. Cary, 61 App. Div. 54, 76 N. Y. S. 580, 173 N. Y. 624, 66 N. E. 1106; State v. Hodges, 14 Rich. L. (S. C.) 356."

I am, therefore, of opinion that the suggestion of error should be sustained.

[File endorsement omitted.]

[fol. 123] IN SUPREME COURT OF MISSISSIPPI

En Banc

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—March 20, 1933

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled, doth order and adjudge that said suggestion of error be and the same is hereby overruled, and further hearing is reserved for the purpose of considering the motion to correct the judgment entered on January 30, 1933.

[fol. 124] IN SUPREME COURT OF MISSISSIPPI

In Banc

No. 30067

S. M. NICKEY et al.

vs.

STATE OF MISSISSIPPI ex Rel. GEORGE T. MITCHELL, Attorney General

OPINION ON MOTION TO CORRECT JUDGMENT—Filed April 3, 1933

SMITH, C. J.:

The appellants have filed a motion to correct the judgment rendered herein by this court on a former day. The error, if such there is, which they desire corrected, is in the calculation and statement in the court below of the amount due by the appellants as general county taxes. This error, if such it is, was made in the court below; and if the appellants desired to complain thereof, they should have separately and particularly set it forth in their assignment of errors. Rule 6 of this Court, 101 Miss. —, p. 904. This they failed to do. The only paragraph in the assignment of errors that could in any way said to have referred

to the alleged error complained of is in this language: "The Court erred in rendering and entering each and every part of the decree against the defendants and the surety on their bond." Such an assignment of error is insufficient for any purpose. It is too late to here challenge the decree of the court below for an error not complained of when the case was under consideration by this court on its merits. By not having included it in their assignment of errors it was waived in so far as any complaint thereat is here concerned. Whether the error complained of, if such it is, can be corrected in the court below under Section 755, Code 1930, is not before us, and we express no opinion thereon.

Overruled.

[File endorsement omitted.]

[fol. 125] IN SUPREME COURT OF MISSISSIPPI

En Banc

[Title omitted]

ORDER OVERRULING MOTION TO CORRECT JUDGMENT—April 3, 1933

This cause this day came on to be heard on the Motion to Correct the judgment herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said Motion be and the same is hereby overruled.

[fol. 126] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

AGREEMENT AS TO TIME—Filed June 22, 1933

It is hereby agreed by and between Counsel for the appellants and the Appellee in the above styled cause, that Counsel for the appellants may have five days from this

date within which to file the necessary papers to perfect the appeal of said cause from the Supreme Court of the State of Mississippi to the Supreme Court of the United States, and that no point will be made by the appellee of the failure of the appellants to perfect said appeal within the time required by the Laws of the United States to perfect said appeal.

Witness our signatures this June 20, 1933.

W. E. Gore, Counsel for Appellants. Greek L. Rice, Attorney General of the State of Mississippi, by E. C. Sharp, Counsel for Appellee.

[File endorsement omitted.]

[fol. 127] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL—Filed June 22, 1933

To the Honorable Sydney Smith, Chief Justice of the State of Mississippi:

Come the petitioners, S. M. Nickey, W. E. Nickey and Mrs. Orpha L. Nickey, principal appellants, United States Fidelity & Guaranty Company of Baltimore, Maryland, surety on the bond releasing the attachment of the Chancery Court of Tunica County, Mississippi, and Charlie Sorrels, W. E. Gore and T. N. Gore, sureties on the appeal bond to the Supreme Court of the State of Mississippi, who feel aggrieved by the judgments rendered in the above styled cause, on January 30, 1933, March 20, 1933, and April 3, 1933, and do hereby pray an appeal from said judgments to the Supreme Court of the United States, for the reasons set forth in the Assignment of Errors filed herewith, and the appellants pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgments were rendered, authenticated according to law, be sent to the Supreme Court of the United States under the law and rules in such cases made and provided; and your petitioners further pray that the

proper order relating to the required security and granting an appeal, with supersedeas, be made therefor.

And, as in duty bound, your petitioners will ever pray.

W. E. Gore, Geo. Butler, Attorneys for Petitioners.

[File endorsement omitted.]

[fol. 128] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 22, 1933

Come S. M. Nickey, W. E. Nickey, residents of the State of Tennessee, and Mrs. O. L. Nickey, a resident of the State of California, who were sued as A. B. Nickey and Sons, in the Chancery Court of Tunica County, Mississippi, and United States Fidelity & Guaranty Company, surety on the bond filed in said court to dissolve an attachment, and Charlie Sorrels, W. E. Gore, and T. N. Gore, sureties on the bond for appeal from the decree of said Chancery Court to the Supreme Court of the State of Mississippi, the appellants herein, and assign the following errors:

1. The Supreme Court of the State of Mississippi, by its construction of Section 4256, Code of Mississippi of 1906, Section 6887, Hemingways Code of Mississippi of 1917, Section 8189, Hemingways Code of Mississippi of 1927, and by its judgments deprived the principal appellants herein of certain tracts of land, located in the State of Mississippi, the property of said principal appellants, on which the taxes were paid, in violation of and contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States, in this, that said court held that said land could be attached and sold for the satisfaction of an alleged personal liability said and held to have been imposed upon said principal appellants, who are non-residents of the State of Mississippi, by reason of the non-payment of taxes on land other than that attached as a personal obligation of said non-resident appellants, although the taxes said and held to have been imposed upon [fol. 129] said other land of said non-resident appellants were assessed, if assessed at all, without any summons,

notice or appearance of said non-resident appellants, at any time prior to or during the assessment proceedings, and in this, the Supreme Court of the State of Mississippi held that said assessment proceedings constituted, not only a valid assessment of said land in rem, but that said proceedings had the legal and practical effect of imposing a personal liability upon and constituted a judgment against said non-resident appellants, although said non-resident appellants were not summoned and did not appear or otherwise submit themselves to the jurisdiction of the authorities of the State of Mississippi, whose duty it was to make a tax assessment against said other land, and in this, that the Supreme Court of Mississippi held that said personal liability could be and was imposed, extraterritorially, upon said principal appellants, without the service of process, without notice and without otherwise subjecting said non-resident appellants to the jurisdiction of said authorities in so making said alleged assessment, which had the effect of enforcing said statute in contravention of the due process of law clause of said Constitution and of depriving said non-resident appellants of their property which was attached, without due process of law.

2. The State of Mississippi does not possess the power to impose personal liability, by its statutes, upon non-residents of the State of Mississippi, for taxes assessed against lands located in said state and owned by such non-residents.

3. Said non-resident principal appellants were denied the equal privileges and immunities of the citizens of the State of Mississippi and the equal protection of the laws of said state, in violation of, and contrary to, Section 2, Article IV and the Fourteenth Amendment of the Constitu-
[fol. 130] tion of the United States, in this, that under the statutes of said State of Mississippi, all property assessed for taxes is required to be sold at public auction, to the highest bidder for cash, and in default of bids at the sale of said property, whereby the taxes are not paid, said property is required to be sold to the State of Mississippi for the full amount of all taxes, costs and damages incident to said sale, which operates as a discharge of all liability, which course is universally pursued in said state and was pursued with reference to all other taxpayers in said state and in Tunica County, Mississippi, for the same year and

under the same assessment, but that the tax collector of said county refused so to sell the land of these non-resident appellants, under the direction of the Attorney General of said State, and in lieu of such sale, this suit was maintained, as against said non-resident appellants, and they were unlawfully selected by said authorities and unlawfully discriminated against by such refusal so to sell said land and to have the benefit of the discharge of said liability for taxes by a sale of their property, although the property of all other taxpayers was so sold and the liability for said taxes thereby discharged, whereby said non-resident appellants were discriminated against, in violation of the statutes of said state and the aforesaid provisions of the Constitution of the United States, which action on the part of said taxing authorities and the Attorney General of the State of Mississippi, the Supreme Court of the State of Mississsippi held not to be violative of said constitutional rights of these appellants, who are, one a resident of the State of California and the other two residents of the State of Tennessee.

4. Although Section 4256, Code of 1906, Section 6887, Hemingway's Code of Mississippi of 1917, Section 8189, Hemingway's Code of Mississippi of 1927, prescribes only a rule of evidence, in providing that an assessment roll shall be only prima facie correct, the Supreme Court of Mississippi has so construed said statute as to make the roll conclusive as a judgment, notwithstanding the fact, [fols. 131-141] that it makes no provisions of the means whereby personal jurisdiction of the property owners can be obtained and notwithstanding no such jurisdiction of the principal appellants was obtained prior to or during the proceedings looking to the alleged assessment of said taxes, in that said court held that the due process of law requirement of the Fourteenth Amendment of the Constitution of the United States was met by affording the principal appellants a hearing in the Chancery Court in which the action was commenced, and notwithstanding it is settled by the long and continuous and now effective course of the decisions of that court, that the chancery courts of said state have not the power to value or assess property or to levy or to collect taxes in said state, which holding that the principal appellants were personally liable for said taxes

had the practical, necessary and legal effect to make the assessment a conclusive judgment, imposing personal liability for the payment of said taxes, without affording the principal appellants an opportunity to be heard on the questions of the value of the land and of personal liability for said taxes and without having such jurisdiction of the persons of said principal appellants as would, as a matter of law, support and lawfully warrant the imposition of a personal judgment against them, when said taxes were said to have been assessed, all of which is contrary to, and in violation of, the provisions of said Fourteenth Amendment, in that it deprived the principal appellants of their property without due process of law.

5. For other grounds which are apparent.

Wherefore the appellants pray that the judgments herein rendered in the Supreme Court of the State of Mississippi be reversed and that proceedings be had in accordance with the mandate of the Constitution of the United States.

W. E. Gore, Geo. Butler, Attorneys for Appellants.

[File endorsement omitted.]

[fols. 142 & 143] Bond on appeal for $5,000, approved and filed June 22, 1933, omitted in printing.

[fol. 144] IN SUPREME COURT OF MISSISSIPPI

No. 30067

S. M. NICKEY et al.

vs.

GREEK L. RICE, Attorney General

ORDER GRANTING APPEAL—Filed June 22, 1933

This day came on to be considered the petition of S. M. Nickey, W. E. Nickey and Mrs. Orpha L. Nickey, and United States Fidelity & Guaranty Company of Baltimore,

Maryland, surety on the bond releasing the attachement issued out of the Chancery Court of Tunica County, Mississippi, and Charlie Sorrels, W. E. Gore and T. N. Gore, sureties on the appeal bond to the Supreme Court of the State of Mississippi, who feel aggrieved by the judgments rendered by the above styled cause in this Court on January 30, 1933, March 20, 1933 and April 3, 1933, and the Chief Justice of the Supreme Court of the State of Mississippi, having considered said petition and having reached the conclusion that said appeal ought to be granted:

It is, therefore, ordered that an appeal be, and it is, hereby granted in said cause to the Supreme Court of the United States, to be held in the City of Washington, D. C., from the judgments heretofore filed and entered herein on January 30, 1933, March 20, 1933, and April 3, 1933, with supersedeas, and that a certified transcript of the record and all proceedings in said cause be forthwith submitted to the said Supreme Court of the United States, and to be further ordered that the appeal bond, with supersedeas, be fixed at the sum of $5,000, which bond has been filed and is hereby approved and a supersedeas and stay of execution of all other proceedings is hereby granted.

Ordered and adjudged this June 22nd, 1933.

Sydney Smith, Chief Justice Supreme Court of Mississippi.

[File endorsement omitted.]

[fols. 145 & 146] Citation, in usual form, showing service on Greek L. Rice, filed June 23, 1933, omitted in printing.

[fol. 147] In Supreme Court of Mississippi

[Title omitted]

Præcipe for Transcript of Record—Filed June 22, 1933

To the Honorable Tom Q. Ellis, Clerk:

The appellants, S. M. Nickey, Mrs. Orpha L. Nickey, and W. E. Nickey, and the surety on bond releasing the attachment, United States Fidelity & Guaranty Company of Baltimore, Maryland, and the sureties on the appeal bond,

Charlie Sorrels, W. E. Gore, T. N. Gore and United States Fidelity & Guaranty Company of Baltimore, Maryland, having perfected their appeal, you will please, in making your record, include the following:

1. Original Bill and Exhibits.

2. Writ of attachement.

3. Bond releasing attachment.

4. Answer. Eliminate last paragraph and insert, without caption, amendment found pages 159 to 162, inclusive of Record, with

5. Evidence: Begin with page 25 of record, insert through paragraph ending "Main Highway", page 46; insert paragraph page 47, "A tax of 3.12%—issued in 1910"; then begin on page 48 "A tax of 75% of the State tax" to end next paragraph ending "when they become due". Then begin on page 50, "A tax of 21.87%, to end of that page. Insert pages 54-56, inclusive. Omit pages 57-112, inclusive. Insert pages 113-122, inclusive. Omit page 123; copy 124-126, inclusive. Omit pages 127-148, inclusive. Copy pages 149-158, inclusive; omit pages 159-162, inclusive. Insert pages 163 and 164; omit pages 165-171, inclusive.

6. Insert Stipulation of revivor and the appeal bond attached, being bond including United States Fidelity & Guaranty Company as surety.

7. Decree, pages 172-176, inclusive.

Omit Notice to Stenographer and appeal bond, 177-178.

[fol. 148] 8. Insert waiver, page 179, and summons, page 180.

9. Assignment of Errors and all orders and judgments entered in your Court, including all opinions of the Supreme Court of Mississippi, and the Judges thereof.

10. The appellate proceedings herein.

W. E. Gore, Geo. Butler, Counsel for Appellants.

[File endorsement omitted.]

[fol. 149] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 150] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed July 31, 1933

In accordance with paragraph 9 Rule 13, of this Honorable Court, appellants file with the Clerk of this Court a definite statement of the points on which they intend to rely and of the parts of the record which they think necessary for the consideration thereof, with proof of service of the same on the adverse party, to-wit:

Statement of the Points on Which Appellants Intend to Rely

1

Section 4256, Mississippi Code of 1906 (Section 6887, Hemingway's Code of Mississippi of 1917, Section 8189, Hemingway's Code of Mississippi of 1927) which provides:

"Taxes a debt recoverable by action.—Every lawful tax levied or imposed by the state, or by a county, city, town, village, or levee board, is a debt due by the person or corporation owning the property or doing the business upon which the tax is levied or imposed, whether assessed or properly assessed or not, and may be recoverable by action; and in all actions for the recovery of taxes the assessment roll shall only be prima facie correct."

as construed by the Supreme Court of the State of Mississippi, is in conflict with the provisions of the Fourteenth Amendment of the Constitution of the United States, which provides that no state shall deprive any person of property without due proces of law, in this, that the Supreme Court of the State of Mississippi held that a certain tract of land owned by the principal appellants located in the State of Mississippi on which the taxes had been paid could be at-
[fol. 151] tached and sold for the satisfaction of an alleged personal liability said and held to have been imposed upon said principal appellants, non-residents of the State of Mississippi, by reason of the non-payment of taxes on land other than that attached, as a personal obligation of said non-resident appellants, although the taxes said and held to have been imposed upon said other lands of said non-

resident appellants were assessed, if at all, without any summons, notice or appearances of said non-resident appellants, at any time prior to or during the assessment proceedings; and in this, the Supreme Court of the State of Mississippi held that said assessment proceedings constituted not only a valid assessment of said lands in rem, but that the proceedings had the legal and practical effect of imposing a personal liability upon, and constituted a judgment against, said non-resident appellants, although said non-resident appellants were not summoned and did not appear or otherwise submit themselves to the jurisdiction of the authorities of the State of Mississippi, whose duty it was to make a tax assessment against said other lands; and in this, that the Supreme Court of Mississippi held that said personal liability could be and was imposed, extraterritorially, upon said principal appellants, without the service of process, without notice and without otherwise subjecting said non-resident appellants to the jurisdiction of said authorities in so making said alleged assessment, and in this, that the Supreme Court of the State of Mississippi held that the State of Mississippi possesses the power to impose personal liability by its statutes upon non-residents of the State of Mississippi for taxes assessed against land located in said State and owned by such non-residents, without providing for notice to or affording opportunity to such non-residents to be heard as to the validity of said assessments.

2

That the Supreme Court of the State of Mississippi, by its judgment and opinion, denies the non-resident principal appellants the privileges and immunities possessed and accorded the citizens of the State of Mississippi by its laws [fol. 152] and the equal protection of the laws of said State, in violation of, and contrary to, Section 2, Article IV, of the Constitution of the United States, providing that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states, and the Fourteenth Amendment of the Constitution of the United States, in this, and under Chapter 199, Laws of 1908, and Section 4326, of the Mississippi Code of 1906 (Sections 6960 and 6962, Hemingway's Code of 1917, Sections 8245 and 8247, Hemingway's Code of 1927) all property assessed for taxes

is required to be sold to the highest and best bidder, for cash, and in default of bids at the sale of said property, whereby the taxes are not paid, said property is required to be sold to the State of Mississippi, for the full amount of all taxes, costs and damages incident to said sale, which operates as a discharge of all liability for such taxes, which course is universally pursued in said State, and was pursued with reference to all other property in said State and in Tunica County, Mississippi, for the same year and under the same assessment as the property of the non-resident appellants was had, but that the tax collector of said County refused so to sell the land of the non-residenf appellants, under the direction of the Attorney General of the State, and in lieu of such sale this suit was maintained as against said non-resident appellants, and they were unlawfully selected by said authorities and unlawfully discriminated against by such refusal so to sell said land and to have the benefit of the discharge of said liability for taxes by a sale of their property, although the property of all other tax payers was so sold and the liability for said taxes thereby discharged, whereby said non-resident appellants were discriminated against, and the Supreme Court of the State of Mississippi held such proceedings not to be violative of the Constitutional provisions above mentioned and the rights of the non-resident appellants.

That while Section 4256, Code of 1906 (Section 6887, Hemingway's Code of 1917, Section 8189, Hemingway's Code of 1927) purported to prescribe only a rule of evi- [fol. 153] dence, in providing that an assessment roll shall be only prima facie correct, the Supreme Court of Mississippi has so construed said statute as to make the roll conclusive as a judgment and as imposing personal liability against a non-resident citizen, although said statute makes no provision of the means whereby personal jurisdiction of the property owner can be obtained prior to or during the proceedings looking to the alleged assessment, in that said Court held that the due process of law requirements of the Fourteenth Amendment to the Constitution of the United States may be met by affording a non-resident property owner a hearing in the Chancery Court in which the action to collect the personal liability was commenced, notwithstanding it is settled by the long and continuous

and now effective course of the decisions of that court that the chancery courts of said State have no power to value or assess property or to levy or collect taxes in said State, which holding that the principal appellants were personally liable for said taxes had the practical, necessary and legal effect to make the assessment a conclusive judgment, imposing personal liability for the payment of said taxes, without affording them an opportunity to be heard on the question of the intrinsic value of the land, and as related to the assessment of other lands in the county, and without having such jurisdiction of the person of said principal appellants as would, as a matter of law, support and lawfully warrant a personal judgment against, when said taxes were said to have been assessed, are contrary to and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, and thereby deprived the principal appellants of their psoperty, without due process of law.

The Following are the Parts of the Record Which the Appellants Think are Necessary for the Consideration of the Points above Mentioned, and Which are hereby Designated to be printed by the Clerk of This Court, viz:

The entire record as certified by the Clerk of the Supreme Court of the State of Mississippi, except all duplications, repetition of titles, etc., as contemplated by para-
[fols. 154 & 155] graph 9, Rule 13, of the Supreme Court of the United States, need not be printed.

This the 27th day of July, 1933.

W. E. Gore, Geo. Butler, Counsel for Appellants.

Jackson, Mississippi, July 27th, 1933.

I, Greek L. Rice, Attorney General of the State of Mississippi, and Attorney of Record for the appellee in the above entitled cause, do hereby acknowledge service of the foregoing statement of points on which the appellants intend to rely and the parts of the record which they think necessary for the consideration thereof.

Greek L. Rice, Attorney General, State of Mississippi, by —— ——.

[fol. 156] [File endorsement omitted.]

Endorsed on cover: File No. 37,901. Mississippi Supreme Court. Term No. 208. S. M. Nickey, W. E. Nickey, Mrs. Orpha L. Nickey, et al., appellants, vs. The State of Mississippi. Filed July 31, 1933. File No. 298, O. T., 1933.

(4182)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 298

S. M. NICKEY ET AL., APPELLANTS,

vs.

THE STATE OF MISSISSIPPI.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OF JURISDICTION.

Appellants submit, in compliance with Rule 12, Revised Rules of the Supreme Court of the United States, adopted June 5, 1928, and amended June 1, 1931, and May 31, 1932, the following statement of the basis of the jurisdiction of the Supreme Court of the United States to review, on appeal, the judgments of the Supreme Court of the State of Mississippi, made on January 30, 1933, March 20, 1933, and April 3, 1933.

A.

Statutory Provisions Sustaining Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (*a*) Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 937, being Section 344, U. S. Code, Ann. Title 28.

B.

The statutes of the State of Mississippi the validity of which is involved follow:

1. Section 4256, Code of Mississippi of 1906, page 1162; 6887, Hemingway's Code of 1917, Vol. II, page 2822; 8189, Hemingway's Code of 1927, Vol. II, page 3238.

2. Section 4326, Code of 1906, page 1182; 6960, Hemingway's Code of 1917, Vol. II, page 2855; 8245, Hemingway's Code of 1927, Vol. II, page 3265.

3. Section 6962, Hemingway's Code, 1917, Vol. II, page 2865; 8247, Hemingway's Code, 1927, Vol. II, page 3266.

The statute scheduled as No. 1, *supra*, reads as follows:

> "8189 (6887). Taxes a Debt Recoverable by Action. Every lawful tax levied or imposed by the state, or by a county, city, town, village, or levee board, is a debt due by the person or corporation owning the property or doing the business upon which the tax is levied or imposed, whether assessed or properly assessed or not, and may be recovered by action; and in all actions for the recovery of taxes the assessment roll shall only be prima facie correct."

The statute scheduled as No. 2, *supra*, reads as follows:

> "8245 (6960). Sale of Land for Taxes—Advertisement. After the fifteenth day of January the tax

collector shall advertise all lands in his county on which the taxes have not been paid, or which is liable to sale for other taxes, for sale at the door of the courthouse of the county on the first Monday of April following; such advertisement shall be inserted for three weeks in some newspaper published in the county, if there be one, but in counties having two court districts the land shall be advertised and sold in the district in which such lands are situated, and be put up at the courthouse door, and shall contain a list of the lands to be sold in numerical order as they are contained in the assessment roll, in substance as follows: * * *."

The statute scheduled as No. 3, *supra,* reads as follows:

"8247 (6962). How Sale Made.—On the first Monday of April, if the taxes remain unpaid, the collector shall proceed to sell the land, or so much and such parts of the land, of each delinquent taxpayer, as will pay the amount of taxes due by him, and all costs and charges, to the highest bidder for cash. He shall first offer forty acres, and if the first parcel so offered do not produce the amount due, then he shall offer another until all the land constituting one tract and assessed as the property of the same owner be offered. The sale shall be continued from day to day within the hours for sheriff's sales until completed; but neither a failure to advertise nor error in the advertisement, nor error in conducting the sale, shall invalidate a sale at the proper time and place for taxes, of any land on which the taxes were due and not paid; but a sale made at the wrong time or at the wrong place shall be void. And any person sustaining damage by reason of any failure or error of the tax collector may recover damages therefor on his official bond."

C.

The judgments of the Supreme Court of the State of Mississippi, reversing in part and affirming in part the de-

cree of the Chancery Court of Tunica County, Mississippi, from which judgments of affirmance this appeal is prosecuted, were entered January 30, 1933, March 20, 1933, and April 3, 1933 (R. 113, 123, 125).

The petition for appeal was presented and allowed on June 21, 1933 (R. 127, 144).

D.

Nature of the Case and Ruling of the Supreme Court of Mississippi.

S. M. Nickey and W. E. Nickey were and are residents of the State of Tennessee and Mrs. Orpha L. Nickey was and is a resident of the State of California. They are the principal appellants herein and will be referred to as the appellants, in this statement.

The appellants were the owners of two tracts of land in Tunica County, Mississippi, upon which taxes were assessed and levied for the year 1928, by a proceeding in rem, without actual notice of the assessment proceedings, without being summoned to appear prior to or during said proceedings and without appearing or otherwise submitting themselves to the jurisdiction of the authorities charged with the duty of assessing land in that county and State. The appellants paid the taxes for the year 1928, which were assessed and levied against one of the tracts of land owned by them, but did not pay the taxes assessed and levied against the other tract of land. The land on which the taxes were not paid was advertised for sale by the tax collector of Tunica County, in accordance with the provisions of Section 4326 Code of 1906, 6960 Code of 1917, 8245 Code of 1927, but, before the date of sale the Attorney General of the State of Mississippi directed the tax collector of Tunica County not to make the sale of the land and thereafter brought an action in the Chancery Court of Tunica

County, by attachment which was levied upon the tract of land upon which the taxes had been paid for the year 1928 by the appellants. In this action, the Attorney General rested the bill on Section 4256 Code of 1906, 6887 Code of 1917, 8189 Code of 1927, and pleaded the land assessment roll of Tunica County as a judgment imposing personal liability upon the appellants for the payment of the amount of the taxes on the tract of land, which were not paid. The bill prayed that the tract of land upon which the taxes were paid be subjected to the payment of the taxes levied against the land on which the taxes were not paid, on the theory that the assessment roll constituted a personal judgment against the appellants, for the unpaid taxes.

The appellants answered the bill and set up, among other defenses, that they had no actual notice, were not served with any personal process and did not otherwise appear or submit themselves to the jurisdiction of the assessing authorities, prior to or during the assessment proceedings, and for that reason the assessment proceedings, as a judgment in personam was void, that the State of Mississippi did not possess the power to impose personal liability, by its statutes, upon non-residents of the State of Mississippi, for taxes assessed against lands located in said State and owned by such non-residents, that the appellants were denied the equal privileges and immunities of the citizens of the State of Mississippi and the equal protection of the laws of said State, a violation of and contrary to Section Two, Article Four, and the Fourteenth Amendment of the Constitution of the United States, in that, under the statutes of said State, all property assessed for taxes is required to be sold at public auction to the highest bidder for cash, and in default of bids at the sale of said property, whereby the taxes are not paid, said property is required to be sold to the State for the full amount of all taxes, costs